77-1784

IN THE SUPREME COURT
OF THE
UNITED STATES

VETERANS OF FOREIGN WARS, POST 4264, a non-profit association; YAMPA VALLEY COOPERATIVE ASSOCIATION, a Colorado corporation; F.M. LIGHT & SONS, INC., a Colorado corporation; ELOISE MORE, d/b/a DAIRY KING; DONALD BROOKSHIRE, d/b/a CORNER LIQUOR; EDWARD DETRICH, d/b/a WAFFLE SHACK, on behalf of themselves and as representatives of a class of persons similarly situated,

Plaintiffs-Appellants,

vs.

CITY OF STEAMBOAT SPRINGS, a municipality established under the laws of the State of Colo.

Defendant-Appellee.

Appeal from the Supreme Court of Colorado
No. 27587
Appellants' Jurisdictional Statement

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APPELLANTS' JURISDICTIONAL STATEMENT

Pursuant to Rule 15, Rules of the Supreme Court of the United States, the Appellants submit this Jurisdictional Statement.

(a) Reference to Reports of Opinions Delivered in the Courts below.

1. The District Court in and for the County of Routt, State of Colorado, (a state trial court of general jurisdiction) rendered its "Amended Findings of Fact, Conclusions of Law and Decree in Civil Action No. 5365 on February 15, 1977. This opinion was not reported. A copy of this opinion is appended to this Jurisdictional Statement as Appendix B.

2. The Supreme Court of Colorado, after appeal of the Routt County District Court's decree, rendered its opinion in case No. 27587. A copy of this opinion is appended to this Jurisdictional Statement as Appendix C. The official report of this opinion has not yet been published. The citation of the unofficial report is 575 P.2d 835.

(b) Statement of Grounds on Which Jurisdiction of the United States Supreme Court is Invoked.

(i) Nature of the proceeding and statute to which it is brought.

In this proceeding the Appellants challenge the constitutionality of the sign code of the City of Steamboat Springs, Colorado. The sign code has

two statutory numerical designations. First, it is designated as Section 19 of Ordinance 480 of the City of Steamboat Springs, Ordinance 480 being the City's general zoning ordinance, enacted April 1975. The sign code, Section 19, incorporates the definitional sections of Ordinance 480 found in Section 2 thereof. Second, the sign code is designated by its numerical designation in the Steamboat Springs Municipal Code, which is 15.28.020.

The sign code was amended by Ordinance No. 565, enacted April 5, 1977, after trial but before argument on appeal to the Colorado Supreme Court. The sign code and the April, 1977 amendment are reprinted in this Jurisdictional Statement as Appendix A, with references to Ordinance 480 and the Steamboat Springs Municipal Code, and with inclusion of relevant definitional sections.

Appellants brought this action in the trial court for declaratory and injunctive relief. In their Complaint, Appellants alleged that the sign code was invalid by virtue of Amendments I and XIV of the United States Constitution.

(ii) Date of judgment or decree sought to be reviewed: February 21, 1978.
Date of denial of rehearing: March 13, 1978.
Date notice of appeal filed: May 10, 1978, in Colorado Supreme Court.

(iii) Statutory provision conferring jurisdiction on Supreme Court of the United States: 28 U.S.C. §1257(2).

(iv) Cases to sustain the jurisdiction: King Mfg. Co. v. Augusta, 277 U.S. 100(1928).

(v) Citation of ordinance. The challenged ordinance is set out in Appendix A.

(c) Questions Presented by the Appeal.

1. Whether the Steamboat Springs sign code is an impermissible prior restraint on freedom of speech;

2. Whether the Steamboat Springs sign code is unconstitutionally vague and discretionary;

3. Whether Section 19(E)(2) of the Steamboat Springs sign code is an overbroad regulation of speech;

4. Whether Section 19(E)(2) of the Steamboat Springs sign code violates Appellants' rights to equal protection and due process.

(d) Statement of the Case.

This case was brought to challenge the constitutional validity of the Steamboat Springs sign code.

The Steamboat Springs city sign code (Appendix A) was adopted in April 1975 as part of the general zoning ordinance for the city, Ordinance 480. The sign code itself is Section 19 of the Ordinance but the definition of the word "sign" is found in Section 2(B)(50) of Ordinance 480. After incorporating the definition of the word "sign" in

Section 2(B)(50) the code goes on to provide for comprehensive regulations to control or prohibit the display of signs in the city. All but a limited number of sign types require a prior permit. Section 19(B), Section 19(C). An "off-site" sign, meaning one not directly pertaining to an existing permitted use of the property where the sign is located, may not be displayed unless permission for same is obtained from the Board of Adjustment. Section 19(A)(2). There is a blanket prohibition against displaying a sign at any location which is more than three feet over or into public property. Section 19(E)(2). Any sign so located and existing before the effective date of the Ordinance was to have been removed by September 1, 1975. Section 19(E)(2). All other signs existing prior to the effective date of the Ordinance and nonconforming for any other reason are "grandfathered" indefinitely and need not be removed. Section 19(F)(3).

Appellants are a group of persons or entities in Steamboat Springs owning signs which extend "into or over public property more than (3) three feet" in violation of Section 19(E)(2) of the sign code. Appellants brought this action in the Routt County Colorado District Court in August 1975, on behalf of themselves and on behalf of all other persons affected by Section 19(E)(2), to have this section, together with the entirety of the sign code, declared unconstitutional as violative of freedom of speech, equal protection and due process. In their Complaint, the Appellants raised the federal questions

of the validity of the sign code under Amendments I and XIV of the United States Constitution. The Appellants sought injunctive and declaratory relief.

Trial to the court was held on November 29, 30 and December 1, 1976. The issues addressed at trial were (1) the invalidity of the sign code's prior permit system; (2) the invalidity of the sign code's classification system; (3) the invalidity of the sign code's prohibition against signs in public property, and (4) the invalidity of the sign code's discriminatory treatment of non-conforming signs affected by Section 19(E)(2). Many of these issues involved facial attacks and Appellants elicited testimony from persons responsible for the enforcement of the sign code, which testimony helped to demonstrate and illustrate the dangers of the ordinance's facial deficiencies. Plaintiffs also introduced evidence to show that the ordinance's discriminatory treatment of Section 19(E)(2) non-conforming signs was unsupported by any valid purpose.

On February 15, 1977, the trial court issued its Amended Findings of Fact, Conclusions of Law and Decree. (Appendix B.) The court entered a judgment against the Appellants because in the trial court's opinion, the Appellants had "failed to prove" that the sign code was unconstitutional. (Appendix B.) Although the trial court's opinion was cast in terms of a failure of proof, it is clear that the court's adverse judgment was grounded in a finding of Appellants' lack of standing

to make facial attacks. (Appendix B, Page 21.)

On appeal, the Colorado Supreme Court first held that Appellants did in fact have standing to make the facial attacks on the sign code. The Colorado Supreme Court then examined the ordinance and found that it was free of constitutional infirmities. The court held that the sign code did not violate freedom of speech, equal protection or due process rights guaranteed by Amendments I and XIV of the United States Constitution.

(e) Statement as to Substantiality of Federal Questions.

1. The sign code is an unconstitutional prior restraint on free speech.

Section 2(B)(50) of Ordinance 480 (Appendix A, Page 2) sets forth the definition of the word "sign."

> Sign. A sign is an object or device or part thereof situated outdoors or indoors which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, purpose, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, motion, illumination or projected images, and which is visible from any public right-of-way. Ordinance 480, Section 2(B)(50).

The definition then excludes specifically certain limited objects that are not signs: certain flags, window displays of products, certain symbols and crests, art works and barber poles. Ordinance 480, Section 2(B)(50).

The Colorado Supreme Court in its opinion (Appendix C) construed the quoted definition of "sign" to include only those signs which are affixed in some manner to real property so as to be "situated."

The Steamboat Springs sign code, after incorporating the expansive definition of the word "sign" above, goes on to provide for comprehensive regulations, including a prior permit system, designed to prohibit or control the display of most visible communication devices within the city. A limited number of sign types do not require a prior permit (Section 19(B)) but the vast majority of signs do need permits before they may be displayed. Signs conveying religious messages require permits. Those protesting racial or sexual discrimination require permits. Those advertising labor disputes and other commercial matters, governmental reform, passage of legislation, all require permits. Anyone erecting, maintaining or modifying a sign violates Section 19 (C) if he does so without first obtaining a permit from the Building Inspector and paying a fee. The permit application must be accompanied by construction drawings and a legal description of the sign's proposed location. Section 19(C). The penalties for violation of Section 19(C) are not insignificant.

According to Section 22(H) of the zoning ordinance, a person may be fined $300.00 per day or suffer 90 days imprisonment for each day he displays a sign without a permit. Nothing in Section 19 provides for any time limit on the Building Inspector's review of a permit application. The ordinance provides for no speedy review of a permit denial, nor does it place on the Building Inspector the onus of restraining the display of a sign. At all points the onus is rather on the would-be sign displayer to press for the right to display his sign. The standards of review are wholly vague and discretionary, as discussed infra.

The City's permit system is an unconstitutional prior restraint, because it places excessive and unduly cumbersome obstacles in the path of one wishing to engage in visual communication, and because it penalizes not merely the display of an improper sign, but the display of even a constitutionally protected sign, if such is done without the prior issuance of a permit and payment of a fee.

The following hypotheticals demonstrate how the permit system may interfere with protected communication.

(a) A church within the City maintains an outdoor sign advertising the times of the church services and the topic of the week's sermon. The sign may not be erected in the first place without a permit and every subsequent change requires a new permit to be obtained.

(b) A church many not erect a sign advertising "Vacation Bible School," or other church functions, without treading through the permit procedures outlined above, including the payment of a sign fee.

(c) Without obtaining a permit a party committeeman may not place a sign at his residence inviting the public to attend a scheduled precinct caucus.

(d) A businessman with an establishment on main street may not place on his window a sign protesting the Panama Canal treaties without first obtaining a permit for such sign.

The Appellants submit that the essence of the First Amendment is a near-complete prohibition against prior restraints. The broad permit requirement imposed by the Steamboat Springs sign code, unattended by any procedural safeguards, flies directly in the face of a long line of decisions by this Court holding such restraints invalid. Appellants submit that the chilling effect of the sign code's permit requirement presents a serious infringement on First Amendment rights and that this case therefore presents a substantial Federal question requiring plenary consideration and oral argument.

The Colorado Supreme Court, in its opinion acknowledged that the sign code constitutes a prior restraint, but stated that such restraint was a "reasonable accommodation" of the city's interests and First Amendment rights. The reasons given by the Colorado Supreme

Court to justify the prior restraint may be paraphrased as follows:

(i) The permit requirement insures compliance with the sign code.

(ii) The City would be inconvenienced if it were required to enforce the ordinance only after a violation.

(iii) The would-be sign displayer is actually benefitted by the prior restraint because he can thereby avoid all risks of law violation and needless expenditure of time and money.

Appellants submit that this Court has never held or even suggested that any of these reasons would be sufficient to justify an admitted prior restraint on free speech. On the contrary, this Court has consistently invalidated such restraints and has indicated that such could be upheld only upon a showing of irreparable injury to a weighty governmental interest.

In Nebraska Press Association v. Stuart, 427 U.S. 539 (1976) this Court pitted two compelling interests: the right of an accused to a trial free of prejudice through pre-trial publicity and right of the press and the public to disseminate and receive news of violent crimes. Even in this context, with extremely grave interests to be protected, the Court found that a gag order imposed on the press could not pass constitutional muster. The interests put forward by the Colorado Supreme Court, enumerated above, appear almost

frivolous in comparison with the protection of the right to a fair trial, and such interests cannot justify a prior restraint on expressive activity.

In Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546 (1975) this Court emphasized again that permit systems, even if justified by a weighty interest, avoid constitutional infirmity only if they take place under procedural safeguards designed to obviate the dangers of a censorship system. The safeguards required are these: First, the burden of proving that the material is unprotected must rest on the censor; second, restraint prior to judicial review can be imposed only for a specified brief period; third, a prompt final judicial determination must be assured. 420 U.S. at 560. The Steamboat Springs sign code contains no such procedural safeguards.

Appellants submit that a broad prior permit system directed at signs -- a traditional and widely used medium of public communication -- far exceeds the reasonable "time, place and manner" restrictions which have gained approval by this Court in the context of some First Amendment cases. The element of "conduct" in the display of a sign is negligible and in any event is far outweighed by the obvious expressive element. A sign does not "intrude" or invade privacy for it is only visible when one ventures into the public forum, the place traditionally preserved for the exercise of First Amendment rights. Appellants submit that the unyielding principle established in Lovell v. Griffin, 303 U.S. 444 (1930) and in Thomas v. Collins,

323 U.S. 516 (1945) -- a ban on censorship in every form -- applies in this case and mandates that the peaceful exercise of First Amendment rights not be made dependent upon a license granted by the government.

2. The sign code is vague and discretionary and therefore violates freedom of speech and due process.

The definition of a "sign" in the sign code is so over broad and vague as to include within its ambit virtually every conceivable kind of physical, visible communication. "A sign is an object or device or part thereof situated outdoors or indoors which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, purpose, product, service, event or location by any means . . . and which is visible from any public right-of-way." (Appendix A, page 2).

The facial obstacle of the sign code's prior restraint, while onerous enough, is made worse by the cumbersome discretionary treatment the would-be sign displayer experiences when he approaches the Building Inspector actually to ask for his sign permit.

The sign code provides for the uncomplicated issuance of a permit for a "permitted sign type;" however, the "permitted sign type" assumes that the proposed sign is an "on-premises" sign, that is, one related to the activity conducted at the sign's site. Any evidence that a sign is an "off-premises"

sign can be fatal, for the whole permit system is overlaid by the strict prohibition of Section 19(A)(2), providing that no off-site sign may be displayed unless the Board of Adjustment first determines, upon request, that an off-site sign is "necessary to promote the interests of the use to which it relates." Section 19(A)(2). There are no standards to control the Board of Adjustment -- only the individual Board members' feelings about necessity or non-necessity.

The sign permit system provides two distinct levels of discretionary and almost standardless examination of a proposed sign application. First the Building Inspector decides if a proposed sign is an "off-premises" sign, and if it is, the permit application is referred to the Board of Adjustment (which meets only once each month) for a determination of whether the sign is "necessary."

The dangers to free speech inherent in the Building Inspector's initial determination as to "on-premises" or "off-premises" can best be demonstrated by an example in the trial transcript, relevant parts of which are appended as Appendix F.

Peter Forbes, a local real estate developer, testified that in the spring of 1976 he and approximately eleven other persons formed a committee to bring the message of "I Found It" to Steamboat Springs. The object of the two-week campaign was to spread the knowledge of Christ throughout the city. The committee erected one "I Found

It" sign within the city limits. It was located on the premises of the First Federal Savings and Loan Association. The sign said only "I Found It." The Building Inspector stated he could not tell from the sign itself what it was all about or what message it was trying to convey. There was a telephone number on the sign, which he called; he was given a religious message over the telephone. Because of the telephone message, he determined that the sign was a religious sign. He then determined that because religion had nothing to do with the business of the savings and loan, the sign must be an "off-site" sign. Because the sign code prohibits all "off-site" signs, he ordered the "I Found It" sign from the bank premises to one of the churches.

Mr. Forbes testified that within 20 hours of the placement of the "I Found It" sign on the savings and loan premises he was personally contacted by the building department and was told to get the sign down immediately. This was in spite of the fact that some of the activity of the campaign was taking place on the savings and loan property. This was also in spite of the fact that one main tenet of the "I Found It" campaign was that religion is to pervade every phase of life, including business. An appeal of the Building Inspector's order to the Board of Adjustment would have been pointless, inasmuch as the campaign would have been over by the time a decision could have been reached by the Board. The experience of the "I Found It" campaign in Steamboat Springs demonstrates vividly the danger of the

sign code's discretionary classification system.

The Colorado Supreme Court held that the phrase "necessary to promote the interests of the use to which it relates" provides the Board of Adjustment with a sufficient standard to guide its members. Appellants submit that the phrase is not only inadequate to establish a standard, it is pernicious, for it invites the Board of Adjustment to evaluate the worth of the "interests" and the ideas sought to be promoted by the sign.

Whatever may be a sufficient standard in other contexts, the exercise of First Amendment rights may not be made dependent on the input of such discretion. In Staub v. City of Baxley, 355 U.S. 313 (1958) this Court held that a permit to solicit union membership could not be made dependent upon the city's consideration of the "effects upon the general welfare of citizens."

In Shuttlesworth v. Birmingham, 394 U.S. 147 (1969) this Court indicated that a parade permit could not be withheld pending a determination by the City Commission that the parade would not be injurious to "welfare, peace, safety, health, decency, good order, morals or convenience."

Appellants submit that the required finding of necessity provided in the city's sign code is no more definite than the criteria struck down in Staub v. Baxley and Shuttlesworth v. Birmingham,

and that it does not provide an adequate standard to regulate in the First Amendment area. The objectionable discretionary aspects of the sign code's classification scheme pervade it and render it facially void.

3. Section 19(E)(2) of the sign code is an overbroad regulation of speech.

The section of the sign code which most directly affects the class of Appellants is Section 19(E)(2), which requires signs extending into or over public property more than three (3) feet on the effective date of the code to be discontinued and removed by September 1, 1975. All other non-conforming signs may remain. Inasmuch as the definition of "sign" in the Code is overly broad, the effect of Section 19(E)(2) is to cause all public property, except for narrow 3-foot strips abutting private property, to be off-limits to a broad range of visual communication, and Section 19(E)(2) is accordingly overbroad and void on its face. See Amalgamated Food Employees v. Logan Valley Plaza, 391 U.S. 308, 88 S.Ct. 1601, 20 L.Ed.2d 603 (1968), where this Court stated: "The essence of those opinions is that streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely." 391 U.S. at 315.

Appellants recognize that the later case of Hudgens v. N.L.R.B., 424 U.S. 507 (1976) has undermined the holding in

Logan Valley as respects expressive activity on certain private property of others and that such property may now be off-limits to such activity. The references in Logan Valley to the right to engage in expressive activity on public property survive Hudgens, however, and such right is now in fact all the more compelling because of the place limitations newly imposed by Hudgens.

"First Amendment concerns arise whenever signs are regulated or prohibited, because signs are by their very nature a means of expression and communication within the meaning of the First Amendment." Opinion of Colorado Supreme Court (Appendix C, page 6). Hence, absolute barring of protected First Amendment means of communication from all but a 3-foot strip of public property, whether or not such visual communication is affixed to real property and without regard to whether such visual communication is unsafe, aesthetically displeasing or detrimental to the general welfare, is unconstitutional.

4. Section 19(E)(2) of the Sign Code violates Appellants' rights to equal protection and due process.

The ordinance provides for two radically different methods for "amortization" of the two classes of non-conforming signs, being three-foot projecting signs on the one hand, and all other non-conforming signs on the other hand. Signs in the first class, Appellants' signs, were required to be abated on or before September 1, 1975, pursuant to Section 19(E)(2); signs in the second class are

permitted to remain indefinitely as non-conforming uses pursuant to Section 19(F) so long as there is no abandonment, damage, destruction or obsolesence. Section 19(F)(4).

Since the sign code touches and concerns fundamental First Amendment rights, the judicial test to be applied is: Has the City proven that the discriminatory classification is necessary to protect a compelling state interest which cannot be reasonably protected in any other way? Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972). Appellants submit that the opinion of the Colorado Supreme Court in this case evidences clearly that such Court did not apply this standard or test in this case, and the record in this case will evidence that the city failed to meet its burden of proof.

Even if no fundamental right were involved, the classification can be upheld if it rests upon a real difference and if that difference bears a reasonable relationship to the purposes for which the classification is established. The Colorado Supreme Court concluded in its opinion that the purpose of Section 19(E)(2) was related to public safety and aesthetics. (Appendix C, page 17). Appellants contend, however, that on its face, the distinction made by Section 19(E)(2) does not constitute a "real" difference and there is no real relationship between such distinction and such purpose. Signs extending over public property more than three feet must be abated, without regard to whether such signs are old or new, safe or unsafe,

high or low, large or small, bright or dull, or whether such signs would otherwise comply with the sign code requirements for new signs. If a hazard or danger, the right to maintain any non-conforming sign terminates immediately by virtue of a separate section of the code. Section 19(F)(4)(C) (Appendix A, pages 15 and 16). Nowhere in the record or at the trial level, is there any finding or conclusion whatsoever by the City that non-conforming signs extending more than three feet into public property are so aesthetically different than signs extending just three feet or less that the former reasonably requires total abatement but the latter reasonably can continue to exist. If aesthetics be the purpose, Section 19(E)(2) singles out a linear extension measurement over precise real property boundaries as the only criteria to distinguish those pre-existing signs which apparently "fail" aesthetically and those which do not. But Appellants submit such single criteria is wholly unrelated to aesthetic ends. As a hypothetical, the code, by setting forth permitted new sign sizes, coloration, surface characteristics, height and the like would appear to be establish the city's standard of an aesthetically "acceptable" sign. Now, if all of Appellants' signs which existed prior to adoption of the sign code met the code's standards for new signs, they would nevertheless be required to be removed immediately under Section 19(E)(2); if all other non-conforming signs existing prior to adoption of the sign code met none of the code's standards and all were huge, bright red and higher than all the local buildings, then such signs could nevertheless continue under the code.

Where no reasonable, rational basis for the discrimination appears from the face of the ordinance or is demonstrated by the city, the substantial variance of amortization of non-conforming signs must be struck down as a denial of equal protection. See Art Neon v. City and County of Denver 488 F.2d 118 (10th Cir. 1973), where the graduated Denver sign code amortization schedule, based on "replacement cost" of non-conforming signs was struck down.

For the foregoing reasons, Appellants submit that this case raises substantial federal questions warranting plenary review by this Court and oral argument.

Respectfully submitted,

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ORDINANCE NO. 480

AN ORDINANCE ENACTING A ZONING CODE TO PROVIDE COMPREHENSIVE REGULATIONS RESTRICTING THE ERECTION, CONSTRUCTION, RECONSTRUCTION, ALTERATION, REPAIR AND USE OF STRUCTURES AND LAND; PROVIDING SPECIFIC REGULATIONS REGARDING FLOOR AREA, LOT AREA, SETBACK, BUILDING HEIGHT, DENSITY, LANDSCAPING, OPEN SPACE, AND OFF-STREET PARKING; DIVIDING THE CITY OF STEAMBOAT SPRINGS INTO DISTRICTS FOR SUCH PURPOSES AND ADOPTING A MAP OF SAID ZONE DISTRICTS; DESCRIBING VARIOUS USES AND BULK REQUIREMENTS; STATING PROCEDURES AND STANDARDS FOR PLANNED UNIT DEVELOPMENTS; SETTING FORTH STANDARDS FOR SIGNS; PROVIDING PROCEDURES FOR THE OBTAINING OF VARIANCES TO THE ZONING ORDINANCES AND AMENDMENTS TO THE ZONING MAP; PROVIDING REGULATIONS FOR NONCONFORMING USES AND STRUCTURES; DESCRIBING METHODS OF ENFORCEMENT AND PRESCRIBING PENALTIES FOR VIOLATION OF ITS PROVISIONS; AND REPEALING ALL ORDINANCES IN CONFLICT HEREWITH.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:

Sign. (Ordinance 480, Section 2(B)(50) Definition) A sign is an object or device or part thereof situated outdoors or indoors which is used to advertise, identify, direct or attract attention to an object, person, institution, organization, purpose, product, service, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, motion, illumination or projected images, and which is visible from any public right-of-way. Signs do not include the following:

a. Flags of nations, or an organization or nations, states and cities, fraternal, religious and civic organizations;

b. Merchandise, pictures or materials or products or services included in a window display;

c. Time and temperature devices but only such portion of a structure used as such a device shall be exempt from classification as a sign;

d. National, state, religious, fraternal, professional or civic symbols or crests;

e. Works of art which in no way identify a product; and

f. Barber poles containing no written advertising.

Regulations for Signs. Ordinance 480, Section 19; (Chapter 15.28 of the Steamboat Springs Municipal Code)

The regulations set forth in this Section, or set forth elsewhere in this Ordinance when referred to in this Section, are the regulations for signs.

A. General Restrictions. (S.S.M.C. 15.28. 020 A through I(3)

1. (A) No sign shall be erected, maintained, repaired, or modified except as permitted by City Ordinance. Signs shall require a sign permit and be subject to setback requirements of the zone district in which they are located unless specifically excepted elsewhere in these regulations.

2. (B) Signs shall identify or advertise only interests conducted on the lot of the sign location, unless the Board of Adjustment, upon request, determines that an off-site sign, conforming to the district regulations in which the sign is located, is necessary to promote the interests of the use to which it relates.

3. (C) No sign shall be located so that the safety of a moving vehicle will be impaired by obscuring the driver's vision.

4. (D) The color or format of signs shall not resemble or conflict with traffic signs or symbols.

5. (E) Signs shall be maintained in good repair.

6. (F) No flashing, blinking or animated sign shall be allowed unless specifically provided elsewhere in these regulations.

7. (G) Signs with metallic surfaces shall be treated to reduce reflection, whether from sunlight or artificial illumination, on nearby residential properties and the vision of passing motorists.

8. (H) No sign shall project above the roof of the supporting building.

9. (I) No illuminated signs shall be allowed except those which conform to the following restrictions:

a. (1) Signs illuminated from an exterior light source provided that no unfrosted light source, flourescent light source, or light source in excess of 25 watts, shall be directly visible to any motor vehicle or pedestrian located in a public right-of-way or street or from any residential area within a distance of 300 feet measured from the light source, and further provided that no portion of the sign, including any frame, bracing or support structure, shall be constructed of a reflectorized surface.

b. (2) Signs illuminated from an interior light source provided that the light source is not visible from the exterior of the sign and provided that the wattage does not exceed the

following requirements: flourescent lights not to exceed (5) watts per square foot of sign area; incandescent lights not to exceed twenty-five (25) watts per square foot of sign area.

c. None of the foregoing provi-
(3) sions shall be construed to allow sign illumination which constitutes a traffic hazard.

B. Signs Not Subject to a Permit. (S.S.M.C. 15.28.030 A through P)

The following signs may be erected without a permit:

1. Signs required or specifically
(A) authorized for a public purpose by any law.

2. Signs limited in content to the
(B) name of the resident and address of the premises in a residential zone district provided that the sign does not exceed two (2) square feet in area, and that no more than one sign is placed on each parcel of land, or one for each dwelling unit, whichever is greater. Such sign shall not be animated or illuminated.

3. Signs of danger or a cautionary
(C) nature not exceeding four (4) square feet per sign in area unless otherwise required by law.

4. Signs located on a property adver-
(D) tising said property for sale, lease or rent. Such signs shall be

no greater than twelve (12) square feet in size and shall be limited to no more than one sign per frontage. Setback requirements shall not apply to such signs.

5. Signs located on a property, posting
(E) said property for warning or prohibitions on trespassing, hunting, fishing, swimming or other prohibited activity. Such signs shall be no larger than one (1) square foot in size, and shall be spaced no closer than one hundred fifty (150) feet apart. Setback requirements shall not apply to such signs.

6. Uniform directional signs located
(F) adjacent to streets or trails as approved by the City Council.

7. Signs in the nature of corner-
(G) stones, commemorative tablets and historical signs not more than six (6) square feet per sign. Historical signs are exempt from setback requirements.

8. Signs in the nature of decorations,
(H) clearly incidental and customary and commonly associated with any national, local or religious holiday not for advertising products or services; provided that such sign shall be displayed for a period of not more than sixty (60) consecutive days or more than sixty (60) days in one year. Such signs may be flashing, blinking, and animated, and need not conform to setback requirements.

9. (I) Signs in a display window of a business use which are incorporated into a display relating to services offered on the same lot or advertising a political candidate or a civic event.

10. (J) Pennants and banners may be erected for any civic occasion, sports event, or arts and humanities event. Such signs shall be displayed for a period of not more than three (3) consecutive weeks. Commercial activity shall not be advertised by pennants and banners.

11. (K) Signs indicating entrances, exits, and one-way traffic, provided that such signs shall not exceed one and one-half (1-1/2) square feet and shall be located at driveways and points of building access. Such signs need not conform to the zone district setback requirements.

12. (L) Signs prohibiting parking on private property, provided such signs do not exceed four (4) square feet in size.

13. (M) Sign Malls and Directory Signs for the benefit of the public as authorized by the City Council. Plans for such signs shall be referred to the Planning Commission for recommendation.

14. (N) Signs directed only toward persons located in the interior of any enclosed structure.

15. (O) Signs directory in nature directing the public to such facilities as parking lots, rest rooms, cashiers,

offices, ticket windows, loading ramps, ski runs, and similar facilities. No such sign may exceed six (6) square feet in area.

16. (P) Signs directing the public to yard or garage sales, providing such signs shall be displayed for no more than forty-eight (48) consecutive hours.

C. Signs Subject to a Permit. (S.S.M.C. 15.28.040)

No sign shall be erected, maintained, or modified except upon issuance of a sign permit therefor by the Building Inspector, and payment of a sign fee as adopted by the City Council. Prior to erection or modification of any sign for which a permit is required, application for a sign permit, accompanied by construction drawings for the placement of the sign and the legal description of the location of the sign, shall be filed with the Building Inspector. If the location, size and construction specifications are in conformance with the Sign Code and the requirements of this Ordinance, a sign permit shall be issued for the life of the sign.

1. Permitted Sign Types: (S.S.M.C. 15.28.050) Any type permitted by the Sign Code, except roof signs.

2. Residential Signs: (S.S.M.C. 15.28.060 A through D) The following restrictions shall apply to all signs related to residential uses, including, but not limited to, home occupations:

a. Number: One sign per
(A) frontage.

b. Maximum Sign Area: Ten (10)
(B) square feet per sign, except that multi-family dwellings may have signs of twenty (20) square feet.

c. Height Above Grade: Detach-
(C) ed signs shall not exceed a height above grade of six (6) feet. For all other signs, there shall be no maximum height except that no sign shall project above the roof of the supporting building.

d. Illumination. No illumi-
(D) nation shall be allowed unless the sign advertises a home occupation of an emergency nature or multi-family dwelling complex.

3. Multiple Use Signs: (S.S.M.C. 15.28.070 A through D) The following restrictions shall apply to all signs in multiple use structures other than residential signs:

a. Number: Each use fronting
(A) on an area open to the public, whether or not such area is a public right-of-way, shall be entitled to one sign attached to the related structure. A use with more than one entrance may have one attached sign per entrance but the total sign area for all such signs shall not

exceed twenty (20) square feet per use. In addition, the entire structure shall be entitled to one additional sign per frontage.

b. Sign Area: The maximum
(B) sign area for any sign related to a single use shall be twenty (20) square feet. The maximum sign area for any sign related to the entire multiple use structure shall be forty (40) square feet.

c. Height Above Grade: Detach-
(C) ed signs shall not exceed a height above grade of twenty (20) feet. For all other signs there shall be no maximum height except that no sign shall project above the roof of the supporting building.

d. Projection: No projecting
(D) sign which projects more than three (3) feet shall be allowed, and no such sign shall exceed twelve (12) square feet of sign area for any single sign face. No projecting sign shall be allowed into or over alleys.

4. Other Signs: (S.S.M.C. 15.28.080 A through D) The following restrictions shall apply to all signs related to other than residential or multiple uses:

a. Number: No more than two
(A) signs on any single frontage, provided that only one sign per frontage may be detached from the structure to which it relates. Only one sign per frontage shall be permitted for any frontage less than fifty (50) feet.

b. Sign Area: The maximum
(B) sign area for any single sign shall be forty (40) square feet, not to exceed a total of sixty (60) square feet for all signs on a single frontage. The maximum sign area for any detached sign shall be twenty (20) square feet, and the ratio of height to width shall be no less than one to two nor greater than two to one.

c. Height Above Grade: Detach-
(C) ed signs shall not exceed a height above grade of twenty (20) feet. For all other signs there shall be no maximum height except that signs shall not project above the roof of the supporting building.

d. Projection: No projecting
(D) sign which projects more than three (3) feet shall be allowed, and no such sign shall exceed twelve (12) square feet of sign area for any single sign face. No projecting sign

shall be allowed into or over alleys.

5. Construction Signs. (S.S.M.C. 15.28.090) In addition to the foregoing provisions, construction signs may be authorized by the Building Inspector identifying or advertising new construction, remodeling, rebuilding, or development of any structure or land area. Each permit issued for a construction sign shall be valid for a period of not more than four (4) successive periods in the same location. Construction signs shall conform in all respects to the requirements for all signs subject to a permit except that they shall be allowed in addition to any other signs permitted. For all uses, only one construction sign per frontage is allowed.

D. Variances. (S.S.M.C. 15.28.100 A through H)

The Board of Adjustment may grant variances to the Regulations for Signs consistent with the following guidelines:

1. It is the policy of the City to
(A) encourage aesthetically pleasing signs without substantial interference with the business to which the sign relates.

2. Signs shall be limited to the
(B) fewest number reasonably necessary to accomplish the purpose for which the sign

relates.

3. (C) Signs should be sized with a consideration of the purpose of the sign, the distance from which it must be viewed, the size of other signs in the vicinity, the amount of total sign area related to the same use, and the speed of passing vehicles.

4. (D) Excessively tall signs should be avoided to prevent visual obstruction of the natural scenery surrounding the City.

5. (E) Projecting signs should not substantially obscure any part of another sign relating to another use.

6. (F) Artificial illumination should be no brighter than necessary to accomplish the purpose for which the sign is intended. It should be a goal to avoid illumination which penetrates residential areas or may hinder the vision of motor vehicles passing by. In general, exterior light sources are preferable to interior light sources.

7. (G) Variances should not be granted which would allow any business use an unfair advertising advantage over another business use.

8. (H) If it is necessary or reasonable to grant a variance to the strict regulations of this

Ordinance, the sign should be limited in size, height, and location in conformance with the purpose of the sign.

E. Extending into Adjacent Property. (S.S.M.C. 15.28.110 A and B)

1. (A) Any marquee or detached sign which extends into or over any property not owned by the sign user shall be discontinued at any time at the discretion of the adjacent property owner in the absence of contractual agreements to the contrary.

2. (B) Such signs extending into or over public property more than three (3) feet shall be discontinued no later than September 1, 1975.

F. Nonconforming Signs. (S.S.M.C. 15.28.120)

1. Declaration of Public Policy. It is reasonable that a time limit be placed upon the continuance of an existing non-conforming sign and an amortization program permits the owner to plan during the period when he is allowed to continue the non-conforming sign while at the same time assuring that the district in which the non-conforming sign exists will eventually benefit from a substantial uniformity of signs.

2. Definition of Non-Conforming Signs. (S.S.M.C. 15.28.130 A and B) A non-conforming sign shall be any sign which:

a. On the effective date of this
(A) Ordinance was lawfully maintained and has been lawfully erected in accordance with the provisions of any prior regulations, but which sign does not conform to the limitations established by this Ordinance.

b. On or after the effective date
(B) of this Ordinance was lawfully maintained and erected by the provisions of this Ordinance but which sign, by reason of amendment to this Ordinance after the effective date hereof, does not conform to the limitations established by such applicable amendment.

3. Continuance of Non-Conforming Signs. (S.S.M.C. 15.28.140) Subject to the terms herein, any non-conforming sign may be continued in operation and maintained after the effective date of this Ordinance, provided, however, that no such sign shall be changed in any manner that increases the non-compliance of such sign with the provisions of this Ordinance; and, provided that the burden of establishing a sign to be non-conforming under this section rests entirely upon the person or persons, firm, corporation, or other entity claiming such status for a sign.

4. Termination of Non-Conforming Signs. (S.S.M.C. 15.28.150 A through E) The right to maintain a non-conforming sign terminates immediately upon any of the following:

a. By abandonment of a sign for a
(A) continuous period of six (6) months.

b. By any violation of the
(B) Steamboat Springs Zoning Ordinance.

c. By destruction, damage or
(C) obsolescence whenever the sign is damaged or destroyed from any cause whatsoever, or becomes obsolescent or substandard under any applicable regulations of Steamboat Springs, or becomes a hazard or danger. No repairs shall be permitted to a non-conforming sign.

d. For any sign which is non-
(D) conforming, because it is flashing, blinking or animated, such sign shall cease to flash, blink or animate no later than June 1, 1974.

e. By condemnation by the City of
(E) Steamboat Springs under its power of eminent domain as provided by law.

ORDINANCE NO. 565

AN ORDINANCE AMENDING THE SIGN REGULATIONS OF TITLE 15, ENTITLED "BUILDINGS AND CONSTRUCTION," AND TITLE 17, ENTITLED "ZONING," OF THE STEAMBOAT SPRINGS MUNICIPAL CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:

Section 1. The following definitions are hereby added to Chapter 17.04, "Definitions and Construction":

17.04.505 Sign--Construction. "Construction sign" means a sign identifying or advertising new construction, remodeling, rebuilding or development of any structure of land area.

17.04.512 Sign--Directional. "Directional sign" means any sign that directs the movement or placement of pedestrian or vehicular traffic on a lot without reference to, or inclusion of, the name of a product sold or service performed on the lot or in a building, structure or business enterprise occupying the same.

17.04.515 Sign--Billboard. "Billboard" means any sign erected, constucted or maintained for the purpose of displaying outdoor advertising by means of poster, pictures, pictorial or reading matter and when such sign is supported by uprights or braces placed in or upon the ground and not attached to any part of any building.

17.04.521 Sign--Marquee. "Marquee sign" means a display sign supported or attached to a roofed structure projecting from and supported by a building.

17.04.522 Sign--Multiple Use. "Multiple use sign" means an on premises sign pertaining to one or more uses on the property of a multiple use structure.

17.04.524 Sign--Off Premises. "Off premises sign" means a sign which contains a message unrelated to a business or profession conducted, or to a commodity, service or entertainment sold or offered upon the premises which such sign is located and pertaining to a permitted use.

17.04.525 Sign--On premises. "On premises sign" means a sign directly pertaining to an existing permitted use on the property upon which said sign is located.

17.04.526 Sign--Public Information. "Public information sign" means a sign identifying community activities, special events and personal information or a display board or kiosk with the intended use of located posters, handouts and cards containing such information.

17.04.528 Sign--Residential. "Residential sign" means a sign permitted for the sole purpose of identifying the inhabitant residing therein, the house, apartment or condominium name or identifying the address thereof and containing no advertising of any kind.

17.04.529 Sign--Roof. "Roof sign" means any sign erected, constructed or maintained upon the roof of any building.

17.04.535 Sign--Traffic control. "Traffic control sign" means a permitted sign for the purpose of identifying private parking areas and directing the flow of traffic on private property.

17.04.545 Sign--Window. "Window sign" means a sign which is applied or attached to or located within six inches of the interior of the window and which can be seen from the exterior

Section 2. Section 17.04.510, "Sign--Detached," is hereby amended to read as follows:

17.04.510 Sign--Detached. "Detached sign" means any sign pertaining to an existing permitted use structurally separate from the building housing the use to which the sign is appurtenant, such sign being supported by itself, or supported or attached on a standard or legs, by a vehicle, pole, gas pump, or other structure.

Section 3. The following is hereby added to Section 15.28.020 of the Steamboat Springs Municipal Code:

J. No sign of an advertising nature shall be pasted or glued directly on any exterior wall or roof or affixed directly upon any such wall or roof by any means of any similar adhesive substance. No paper or cloth sign shall be tacked directly on any wall or roof.

K. It shall be unlawful to use in connection with any sign or to use for advertising purposes any radio, phonograph, whistle, bell or other sound or noise making or transmitting device or instrument, except with the permission of the Board of Adjustment.

L. No sign shall cover up a window, doorway or other opening which provides ventilation or exit facilities.

M. No sign except residential and traffic control sign, shall be erected or maintained upon or along any boulevard, parkway, highway or street, except in business, commercial, industrial, or commercial highway district and except as otherwise permitted in this Code.

Section 4. The first sentence of Section 15.28.040 is hereby amended to read as follows: "No construction sign, detached sign, directional sign, billboard, marquee sign, multiple use sign, off premises sign, on premises sign, public information sign, projecting sign, residential sign, roof sign, traffic control sign, wall sign, or window sign shall be erected, maintained or modified except upon issuance of a sign permit therefor by the building inspector and payment of a sign fee as adopted by the city council, unless specifically exempted by Section 15.28.030 hereof.

Section 5. Severance Clause. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this ordinance.

Section 6. Effective Date. This Ordinance shall take effect immediately upon the expiration of five (5) days from and after the final date of publication as provided by Charter.

READ, PASSED AND APPROVED this 5th day of April, 1977.

/s/ Donald E. Barrett
City Council President

ATTEST:

/s/ Karen Wright
Deputy City Clerk

IN THE DISTRICT COURT
IN AND FOR THE COUNTY OF ROUTT
AND STATE OF COLORADO

Civil Action No. 5365

VETERANS OF FOREIGN WARS, POST 4264, a non-profit association, et al., Plaintiffs, vs. CITY OF STEAMBOAT SPRINGS, a municipality established under the laws of the State of Colorado, et al., Defendant.	AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW and DECREE

THE COURT HAS CONSIDERED Plaintiffs' Motion for New Trial or in the Alternative to Alter or Amend the Judgment entered herein, and the Defendant's Motion to Amend Judgment, along with briefs in support thereof and in opposition thereto.

IT IS ORDERED that Plaintiffs' Motion for New Trial is denied.

IT IS FURTHER ORDERED that Plaintiffs' Motion and Defendant's Motion to Amend the Judgment is granted.

IT IS THEREFORE ORDERED that the prior Findings of Fact, Conclusions of Law and Decree entered herein on December 13,

1976, are withdrawn in their entirety, and the following Findings of Fact, Conclusions of Law and Decree are substituted in place thereof:

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW and DECREE

THIS MATTER CAME ON FOR TRIAL TO THE COURT on November 29, November 30 and December 1, 1976. The Court took the matter under advisement at the conclusion of the trial.

THE COURT HAS REVIEWED the Court file and the exhibits and briefs herein.

PLAINTIFFS WERE REPRESENTED by Sharp and Black, and by Mary Jane Simmons.

DEFENDANTS WERE REPRESENTED by Al Ratcliffe.

AT THE CONCLUSION OF THE TRIAL on December 1, 1976, counsel stipulated that all Defendants except the City of Steamboat Springs should be dismissed as parties herein. It is so ordered.

PLAINTIFFS FILED THEIR COMPLAINT herein on August 8, 1975, seeking a permanent injunction and a declaratory judgment. Hearing was held herein on August 21, 1975, on Plaintiffs' motion for preliminary injunction. The Court granted a preliminary injunction, which has been in effect until this time.

SIX NAMED PLAINTIFFS filed suit herein on behalf of themselves and as representatives of a class of persons similarly situated.

AT THE TIME OF THE HEARING on August 21, 1975, it was stipulated by counsel that this was a proper class action proceeding. Other matters were stipulated to at that time, which are set forth in the Court Order dated August 22, 1975, and do not need to be set forth again in this opinion.

AT THE CONCLUSION OF PLAINTIFFS' EVIDENCE, Defendant moved for dismissal, which motion was taken under advisement by the Court.

FINDINGS OF FACT

1. This Court has jurisdiction of the parties and of the subject matter herein.

2. It was stipulated by counsel that Exhibits D, E, F, G, H and 4 be admitted into evidence.

3. Ordinance No. 480 of the City of Steamboat Springs was passed and approved by the City Council of the City Steamboat Springs, on April 2, 1975. Said Ordinance is a general zoning ordinance and Section 19 sets forth regulations for signs. Section 19 was incorporated into Ordinance 480 and had previously been Ordinance 428, which was adopted on November 26, 1973, and had been in effect five (5) days after its publication. Ordinance 480 amended Ordinance 395, which had been in effect prior to November 26, 1973.

4. Section 19E and other portions of Section 19 of Ordinance 480 to which Plaintiffs object had been in effect since December 1973 or prior thereto.

5. Plaintiffs' claim that Section 2(b)(50) and Section 19 of Ordinance 480 are unconstitutional and invalid as being an overbroad prior restraint on the freedoms of speech, press and expression guaranteed by the Colorado and United States Constitutions.

6. Plaintiffs further claim that Section 19(e)(2) of Ordinance 480 is unconstitutional and invalid as being violative of the Fourteenth Amendment of the United States Constitution and Article II, Section 25 of the Colorado Constitution.

7. Plaintiffs further claim that Defendant, City of Steamboat Springs, has exceeded its authority under C.R.S. 31-23-201(1).

8. It was stipulated by counsel that the named Plaintiffs all own signs which extend more than three (3) feet over public property and would be required to be removed by September 1, 1975, under Ordinance 480. As stated above, it was stipulated by counsel that this was a proper class proceeding.

9. Plaintiffs further claim that Section 19 is invalid on its face.

10. The witnesses called by Plaintiffs were the planning administrator for Routt County and employees of the Steamboat Springs Building Department. One other witness called by Plaintiffs testified regarding an "I Found It" sign that his religious association had placed alongside U.S. Highway 40 within the City of Steamboat Springs. None of the Plaintiffs testified, and no witnesses were called by Defendant.

11. There was no evidence that Plaintiffs were being discriminated against or that they were being treated unfairly or arbitrarily. In fact, there was no evidence presented by Plaintiffs regarding the types of signs or contents thereof, or the sizes of any specific signs of Plaintiffs or owners of signs they purported to represent, namely signs which extend into or over public sidewalks or streets more than three (3) feet, except very limited matters contained in various minutes of the City Council of Steamboat Springs which were admitted into evidence. There was no evidence that the classification of the above signs as distinguished from other non-conforming signs was discriminatory or unreasonable or arbitrary.

12. There was no evidence by Plaintiffs regarding any expenses for removal of such signs, and there was no evidence regarding loss of value of such signs or lost business profits or other benefits by Plaintiffs. There was no evidence that Plaintiffs had suffered or would suffer pecuniary damages as a result of the Ordinance.

13. There was no evidence that Section 19 of Ordinance 480 restrained or interfered in any way with Plaintiffs' rights of freedom of speech, press and expression guaranteed by the United States Constitution or the Colorado Constitution.

14. There was no evidence by Plaintiffs that their right to equal protection of the law under the Fourteenth Amendment to the United States Constitution was violated and there was no evidence that they had been arbitrarily and unreasonably discriminated against.

15. There was no evidence that the classification created by Section 19 of Ordinance 480 had no reasonable relation to any legitimate public purpose. On the contrary, there was evidence that said Section 19 did have a legitimate public purpose.

16. There was no evidence that Section 19(e)(2) deprived Plaintiffs of their property without due process of law contrary to the Fourteenth Amendment of the United States Constitution and Article II, Section 25 of the Colorado Constitution. In fact, there was no evidence that the City of Steamboat Springs would take any property of Plaintiffs.

17. There was no evidence that the City Council of the City of Steamboat Springs exceeded its authority under C.R.S. 31-23-201(1) by enacting Section 19 (e)(2) of Ordinance 480.

18. There was no evidence that Plaintiffs would suffer any injuries if Defendant enforced Section 19 of Ordinance 480.

19. Plaintiffs have not sustained their burden of proof, and have not presented any evidence that they would be adversely affected by the enforcement of Section 19(e)(2) of Ordinance 480.

20. The only evidence presented by Plaintiffs attempted to show that Section 2(b)(50) and Section 19 of the Ordinance 480 were facially overbroad and therefore unconstitutional, and that Section 19 did not set forth sufficient standards for the guidance of the Building Inspector and the Board of Adjustment and that many matters pertaining to signs were left to their unbridled discretion.

21. Assuming arguendo that portions of Section 2(b)(50) and Section 19 of Ordinance 480 might be overbroad, there was no evidence that Plaintiffs came within any such overbroad provisions.

22. There was no evidence that employees of the Office of the Building Inspector of Steamboat Springs had exercised any discretion insofar as any of the Plaintiffs were concerned.

23. The Office of the Building Inspector of Steamboat Springs was entrusted with the enforcement of the sign code in Steamboat Springs.

24. Section 19 of Ordinance 480 sets forth numerous standards and classifications of signs for the guidance of the public and of the Steamboat Springs Building Inspector.

25. The signs of Plaintiffs are non-conforming under the provisions of Section 19 of Ordinance 480.

26. The date of September 1, 1975, set in Ordinance 428 in November 1973, for termination of signs extending more than three (3) feet over public property was reasonable. There was no evidence presented by Plaintiffs to the contrary.

27. There was no evidence presented by Plaintiffs regarding the application of the reasonableness test to the legislative determination and of the various factors and combinations thereof, as set forth on Page 122 of Art Neon Company vs. Denver 488 Fed. 2d 118. Therefore, since Plaintiffs had the burden of proof, there is no basis for this Court to hold that the legislative

determination was unreasonable. The Court must therefore conclude that Section 19 or Ordinance 480 is basically reasonable.

CONCLUSIONS OF LAW

1. Since the case of Village of Euclid v. Ambler Realty Co., (1926) 272 US 365, 47 S.Ct. 114, which held that a municipal zoning ordinance was within the police power of the municipal corporation, the courts have undertaken an ordinance-by-ordinance, case-by-case inquiry to determine whether specific regulations, or their application, were reasonably related to the police power, or were unreasonable, arbitrary and capricious. Anderson, American Law of Zoning, Volume 1, Page 49 and 53.

2. There is a presumption of constitutionality of zoning ordinances, and a zoning ordinance is a legislative act. Anderson, Vol. 1, supra, P. 65; Orth v. Board of County Commissioners (1965, Colorado) 408 P.2d 974.

As stated in Willot vs. Beachwood, 175 Ohio St. 557, 197 NE 2d 201; Anderson Vol. 1, supra, P. 66; "The legislative, not the judicial, authority is charged with the duty of determining the wisdom of zoning regulations, and the judicial judgment is not to be substituted for the legislative judgment in any case in which the issue or matter is fairly debatable."

"The power of a municipality to establish zones, to classify property, to control traffic and to determine land use policy is a legislative function which will not be interfered with by the courts unless such power is exercised in such an arbitrary, confiscatory or unreasonable manner as to be

in violation of constitutional guarantees."

A legislative act is presumed to be constitutional and valid. This presumption applies to zoning ordinances. Anderson, Vol. 1, supra, P. 67; Huneke v. Glaspy, 155 C 593, 396 P.2d 453.

3. The burden of proof rests with the litigant who asserts that a zoning ordinance is unconstitutional. Anderson, Vol. 1, supra, P. 70; Huneke v. Glaspy, supra; Orth vs. Board of County Commissioners, supra.

The objective of proof everywhere is to determine that the Ordinance or its specific application is unreasonable and arbitrary. Anderson, Vol. 1, supra, P. 71. In Colorado, the challenger to the zoning ordinances must prove that such ordinances are unreasonable and arbitrary beyond a reasonable doubt. Stroud vs. Aspen, 532 P.2d 720; Baum vs. Denver, 147 C 104, 363 P.2d 688; Bird vs. Colorado Springs, 176 C 32, 489 P.2d 34; Art Neon Company vs. Denver, 488 F2d 118.

4. Courts have frequently said that the burden of proving the arbitrary or unreasonable character of a zoning ordinance is not sustained if the evidence does no more than to demon-

strate that the issue is fairly debatable. Anderson, Vol. 1, supra, P. 72. The wisdom of a zoning ordinance is a matter within the competence of the legislature; the Court may not substitute its judgment for that of the legislative body. Anderson, Vol. 1, supra, P. 74.

5. In considering criteria of constitutionality, and the balancing of public and private interests, in a zoning ordinance, the pivotal question is whether the ordinance is a reasonable exercise of the police power, having a discernible tendency to serve the public health, safety, morals, or welfare. Anderson, Vol. 1, supra, P. 80.

6. Municipal ordinances which regulate the height, size and construction of signs are upheld where the restrictions are reasonable. Such regulations have a reasonable relation to public safety and are within the police power. Signs which overhang the public way involve a potential safety hazard and may be regulated. Thus, an ordinance was sustained which prohibited signs which projected more than twenty-four (24) inches from a building, or more than fourteen (14) inches over the public way. Anderson, Vol. 1, supra, P. 450 - 451.

Signs which overhang a public sidewalk or street not only infringe the public's exclusive right to the right-of-way, but they involve a safety hazard if they are not properly constructed or maintained. A municipality may prohibit or regulate such signs. Anderson, Vol. 2, supra, P. 452.

7. Regarding non-conforming signs, while a non-conforming sign of substantial value may be continued if it does not involve a nuisance or safety hazard, a municipality may terminate a sign which poses a threat to public safety. A sign which extends over a public sidewalk involves a safety hazard and the right to maintain it may be terminated. Anderson, Vol. 2, supra, P. 461.

8. It was stipulated by counsel that this was a proper action for a declaratory judgment.

A person whose rights and status are affected by a municipal ordinance may obtain a declaratory judgment, but he must demonstrate that he has suffered or will

suffer pecuniary damages as a result of the regulation - - - (emphasis supplied). Anderson, Vol. 3, supra, P. 658. Facts must be alleged and proved which will justify the granting of a declaratory judgment (emphasis supplied). Anderson, Vol 3, supra, P. 664.

TURNING TO FACTS AND MATTERS in the case before this Court and considering more Colorado authorities:

9. Cities have authority to adopt reasonable zoning ordinances, including sign ordinances, C.R.S. 31-23-201, Art Neon Company v. Denver, 488 F.2d 118.

10. Section 19 of Ordinance 480 is a portion of a zoning ordinance regularly and legally adopted by the City of Steamboat Springs.

11. Section 19 of Ordinance 480 is substantively the same sign code as Ordinance 428 which was passed by the City Council on November 26, 1973. This is not an emergency-type situation in which the City Council has taken precipitous action and the Plaintiffs have had notice for almost two (2) years that signs extending more than three (3) feet over public property would have to be discontinued by September 1, 1975. More than one year additional has elapsed since that time.

12. Counsel for Plaintiffs concedes in her brief that the City of Steamboat Springs has the power to regulate public property.

13. Public streets and sidewalks, which have been dedicated to public use, are public property. The individual or entity owning the adjoining private property

has no exclusive right or claim to the use of said public streets and sidewalks and the airspace above them.

14. Section 19(E) of Ordinance 480 provides that signs extending into adjacent public property more than three (3) feet shall be discontinued no later than September 1, 1975, and Section 19(E) pertains to non-conforming signs and for the continuance and termination of such signs. Ordinances that require non-conforming signs to be removed or brought into conformance within a specified time after they become non-conforming are generally regarded as a proper exercise of the police power. Art Neon Company Case, supra.

15. The decision to terminate non-conforming uses, and the method to be used, is made by the appropriate legislative body. Such a legislative decision under the police power is prima facie a valid factual determination. The parties attacking such an ordinance have to meet a heavy burden. Art Neon Company Case, supra.

16. The legislative determination must only meet the test of "reasonableness", that is, the plan for termination must be "reasonable." Art Neon Company Case, supra.

17. The zoning control sought to be exercised by the City of Steamboat Springs over signs is through a classification according to types which may be displayed in various zoning districts. Signs are not prohibited, but a close limitation is placed on the types permitted. The provision of the ordinance which is in issue is a part of a city-wide zoning plan under which the typical property use

controls are established. There is no doubt that a general zoning ordinance may be enacted by the City of Steamboat Springs. Such ordinances are a valid exercise of the police power. Art Neon Company Case, supra.

18. Termination of non-conforming zoning uses and non-conforming signs are in further exercise of the police power. Art Neon Company Case, supra.

19. The "amortization" method used in Ordinance 480 has been established by the authorities as a proper method to terminate non-conforming uses. It is clearly applicable to signs and is an aspect of the balancing of the public good against individual harm as part of the City's overall zoning plan and ordinance. Art Neon Company Case, supra.

20. The challenged provision (Section 19) does not prohibit the use of signs, but requires conformance to specified types in specified places. This comes within the police power category. Section 19 is well within an overall zoning plan which is not challenged, and the City Council has decided it is an essential part thereof. Zoning from its inception has been grounded as a legislative function on the police power, and has been sustained by the courts. Art Neon Company Case, supra.

21. This case is distinguishable from the case of Combined Communications Corporation vs. Denver, 542 P.2d 79. In that case Denver attempted to prohibit an entire industry (billboards). Such is not the case here. In addition, in that case, there were other constitutional questions involved, on which evidence has not been presented in this case.

22. Plaintiffs do not have standing to attack the prohibition against flashing, blinking or animated signs in Section 19(a)(6), or of signs prohibited under Section 19(a)(8), or of signs prohibited under Section 19(a)(2). There was no evidence presented by Plaintiffs to show that any of Plaintiffs' signs came within those categories. See Combined Communications Case, supra, Footnote 1.

23. It is axiomatic that the City may, in the exercise of its police power, restrict or forbid the erection of particular structures or a particular use, where such restriction or prohibition is not arbitrary and unreasonable and bears a substantial relationship to public health, safety, morals, or general welfare. It has also been held that if the validity of a legislative classification for zoning purposes is fairly debatable, legislative judgment must be allowed to control. Combined Communications Case, supra; Village of Euclid, Ohio vs. Ambler Realty Company, 272 U.S. 365.

24. It has also been held that a Court is without the power to substitute its zoning philosophy for that of the zoning body; and this is for practical as well as legal reasons. Nopro v. Town of Cherry Hills, 180 C 217, 504 P.2d 344.

25. Plaintiffs contend that Section 19 and Section 2(b)(50) of Ordinance 480 are unconstitutional on their face, and that anyone can raise that question, regardless of whether they are directly affected by the Ordinance. Plaintiffs cite Broadrick vs. Oklahoma, 413 U.S. 601; Bolles vs. People, 541 P.2d 80; and People vs. Tabron, 544 P.2d 372 as authorities for

this proposition. None of these cases deal with zoning or with sign restrictions.

The Broadrick Case does not support Plaintiffs' contention. In that case, the Court stated: "Embedded in the traditional rules of governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others not before the Court (citing cases). A closely related principle is that constitutional rights are personal and may not be asserted vicariously (citing case). These principles rest on more than the fussiness of judges. They reflect the conviction that under our constitutional system Courts are roving commissioners assigned to pass judgment on the validity of the Nation's laws (citing case). Constitutional judgments, as Mr. Chief Justice Marshall recognized, are justified only out of the necessities of adjudicating rights in particular cases between the litigants brought before the Court." The Court went on to hold that one exception to the above principles has been carved out in the area of the First Amendment.

However, as stated above in the Court's Findings of Fact, there was no evidence that any of the Plaintiffs' rights under the First Amendment to the United States Constitution had been restricted or affected in any way.

In the Broadrick Case the Court went on to consider the argument of facial overbreadth of the statute in question. The Court stated: "Application of the overbreadth doctrine in this manner is, manifestly, strong medicine. It has been employed by the Court sparingly and only as a last resort. Facial overbreadth has not been

invoked when a limiting construction has been or could be placed on the challenged statute." (citing cases).

The Court went on: "To put it another way, particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep."

The Court, in the Broadrick Case went on to conclude and hold that the statute in question was not substantially overbroad. The Court stated: "But, as presently construed, we do not believe that Section 818 must be discarded in toto because some persons arguably protected conduct may or may not be caught or chilled by the statute."

26. The Bolles case and the Tabron case, supra. dealt with the First Amendment to the United States Constitution. In the Bolles case, the unconstitutional subsection of the statute dealt with speech. The Tabron case involved the constitutionality of obscenity statutes and the showing of a film at a theatre. As stated above, there is no evidence that Plaintiffs' signs involved the First Amendment. In the Bolles case the Court stated: "Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court. Not so, however, where, as here, we are dealing with First Amendment protections." (Citing the Broadrick case.)

The Court went on to say: "That whenever possible a statute should be construed as to obviate or reduce any constitutional infirmities."

In the Tabron case the Court quoted the above statement from the Bolles case.

27. This Court therefore concludes that Plaintiffs cannot raise questions of unconstitutionality based on facial overbreadth of Ordinance 480, inasmuch as they did not show that their rights under the First Amendment had been adversely affected. Therefore, the general rule, as stated in Broadrick, Bolles, and Tabron would control, and that is that a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the Court. Therefore, Plaintiffs did not have standing to raise the question of unconstitutional overbreadth of Ordinance 480 based on the First Amendment. Plaintiffs failed to present any evidence that their rights under the First Amendment had been adversely affected. Plaintiffs therefore failed to sustain their burden of proof. See also Combined Communications Case, supra, Footnote 1, in which the trial court found that although the thirty (30) day period was challenged as unconstitutional by the Combined Communications, the Plaintiffs did not show sufficient standing to attack that provision since they neither have, nor was there any suggestion that they desired to have such signs.

The mere fact that counsel stipulated that this was a proper case for a declaratory judgment, did not relieve Plaintiffs of the burden of proof. By failing to present

evidence and failing to sustain their burden of proof, they failed to show that they had standing to challenge the constitutionality of Section 19.

28. Plaintiffs argue that Section 19(e)(2) is void on its face and unconstitutional and that it violates Plaintiffs' rights to equal protection and due process and argue that Section 19 creates two distinct classes of non-conforming signs and that the Ordinance provides different methods for "amortization" of the two classes of non-conforming signs. Plaintiffs cite Dunn vs. Blumenstein, 405 U.S. 330, 93 S.Ct. 995, and Jarmel vs. Putman, 179 C 215, 449 P.2d 603. Both cases dealt with statutory residential requirements for voting and have nothing to do with signs. The right to vote is a fundamental constitutional right, but there is no showing by Plaintiffs that they have a fundamental constitutional right to erect or maintain signs extending over public property. In fact, Plaintiffs' attorney at Page 6 in her brief concedes that the City has the power to regulate public property. See also the Art Neon Case, supra. There was no evidence presented by Plaintiffs to support this argument, and the Court concludes that Plaintiffs failed to sustain their burden of proof that Section 19(e)(2) violated their rights to equal protection and due process. As was stated in the Art Neon Case, supra: "The decision to terminate non-conforming uses, and the method to be used, is made by the appropriate legislative body --- Such a legislative decision under the police power is prima facie a valid factual determination. The parties attacking such an ordinance have to meet a heavy burden."

29. Plaintiffs also argue that

Section 19(e)(2) is overbroad and violates the freedom of expression and assembly and abridges free speech. Here again, Plaintiffs did not present any evidence to show that their rights of free speech and assembly had been violated. Plaintiffs failed to sustain their burden of proof. There was no showing by Plaintiffs that any rights they might have to "commercial speech" is restricted or affected by Section 19(e)(2).

30. Plaintiffs further argue that the entire Section 19 is void on its face and unconstitutional, and that it is an unconstitutional prior restraint which violates freedom of speech and due process. The Court's findings and holdings set forth above answer this without the necessity of further repetition.

31. Plaintiffs further argue that Section 19 violates free speech and due process because it vests excessive discretion in the city officials.

Here again, Plaintiffs failed to present any evidence that they were adversely affected or restricted and Plaintiffs failed to sustain their burden of proof in this regard.

32. Plaintiffs, having signs extending more than three (3) feet over public property are mere licensees or permittees, who have acquired no vested rights. Such permits or licenses are subject to revocation. Plaintiffs have not acquired any rights against the City by prescription.

33. Ordinance 480 contains a severability clause in Section 24(a) which provides: "If any section, subsection, sentence, clause or phrase of this ordinance is for any

reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance."

If there is any valid question about the constitutionality of any portion of Ordinance 480, that question, if properly presented and proved by Plaintiffs, can be considered by the Court without the necessity of holding the entire Ordinance or the entire Section 19 of said ordinance invalid or unconstitutional.

As stated above, Plaintiffs have failed to sustain the burden of proof on the various constitutional issues they have attempted to raise in their argument, and Plaintiffs have failed to show that any portion of Section 19 or of Ordinance 480 is unconstitutional and invalid as far as Plaintiffs' signs are concerned or as far as Plaintiffs' constitutional rights are concerned. Also, as stated above, Plaintiffs do not have standing to raise questions of constitutionality which do not affect them in this case.

34. Ordinance 480 and Section 19 thereof should be read and construed in its entirety and its constitutionality upheld unless it has been proven beyond a reasonable doubt, that it is unconstitutional insofar as Plaintiffs are concerned. As stated above, no such showing has been made by Plaintiffs herein.

35. Based on the authority of Karsh vs. Denver, 490 P.2d 936, the Motion of Defendant to Dismiss Plaintiffs' Complaint should be denied. See also 22 Am. Jur. 2d, Declaratory Judgments, P. 966.

36. By reason of all of the above, the Court concludes that judgment should be entered in favor of Defendant and against Plaintiffs herein.

DECREE

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. Judgment is entered in favor of Defendant and against Plaintiffs herein.

2. Plaintiffs failed to prove that Ordinance 480, or Section 19 thereof, is unconstitutional.

3. Court costs herein shall be assessed against Plaintiffs.

4. Defendant's Motion to Dismiss is denied.

5. Stay of execution is granted for thirty (3) days from this date in order to allow Plaintiffs time to comply with the provisions of Section 19(e)(2) of Ordinance 480.

DATED this 15th day of February, 1977, in the City of Steamboat Springs, County of Routt, State of Colorado.

BY THE COURT:

/s/ Don Lorenz
Don Lorenz, Judge

IN THE SUPREME COURT
OF
COLORADO

No. 27587

VETERANS OF FOREIGN WARS, POST 4264, a non-profit association; YAMPA VALLEY COOPERATIVE ASSOCIATION, a Colorado corporation; F. M. LIGHT & SONS, INC. a Colorado corporation; ELOISE MORE, d/b/a DAIRY KING; DONALD BROOKSHIRE, d/b/a CORNER LIQUOR; EDWARD DETRICH, d/b/a WAFFLE SHACK, on behalf of themselves and as representatives of a class of persons similarly situated,	)	
Plaintiffs-Appellants,	)	Feb. 21, 1978
v.	)	
CITY OF STEAMBOAT SPRINGS, a municipality established under the laws of the State of Colorado,	)	
Defendant-Appellee.	)	

Appeal From the District Court
of
Routt County

Honorable Don Lorenz, Judge

EN BANC JUDGMENT AFFIRMED

Sharp, Black & Borden, P.C.,
Mary Jane Simmons,

Attorneys for Plaintiffs-Apellants.

Ratcliffe & Chamberlin,
Allen T. Ratcliffe, Jr.,
Dean Link,

Attorneys for Defendant-Appellee.

MR. JUSTICE ERICKSON delivered Opinion of the Court.

The City of Steamboat Springs, a home-rule municipality, adopted a sign code in December of 1973 as part of the city's general zoning ordinance.[1] The facts have been agreed to and are not in issue. The Steamboat Springs' sign code provides comprehensive regulation for all signs, with certain exceptions which are not in issue in this case. No sign, with limited exception, can be erected prior to the acquisition of a city permit, payment of a fee, and compliance with the sign code's regulations. Section 19(E)(2) of the sign code provides that any sign which extends more than three feet into or over public property shall be discontinued by September 1, 1975.

The appellants are a group of persons who own signs which extend more than three feet into or over public property in violation of Section 19(E)(2). The Veterans of Foreign Wars brought this action on behalf of themselves and all other persons affected by Section 19(E)(2), seeking a declaratory judgment that the sign code is unconstitutional and a permanent injunction against its enforcement. Trial to the court resulted in a judgment in favor of Steamboat Springs. We affirm.

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1 Steamboat Springs' sign code, enacted in 1973, has since been amended and reenacted as Ordinance No. 480. The provisions of Ordinance No. 480 will be considered on this appeal, since they are substantially similar to those contained in the original ordinance.

The following issues are raised on appeal: (1) Do the appellants possess standing to challenge the sign code as being facially overbroad and vague? If so, (2) Is the sign code facially overbroad and vague? (3) Does the sign code constitute a prior restraint on the exercise of First Amendment rights? (4) Is Section 19(E)(2) a valid exercise of the police power? (5) Are the appellants' rights to the equal protection of the laws violated by Section 19(E)(2)'s requirement that all non-conforming signs must be terminated by September 1, 1975?

I.

Standing

The appellants alleged and presented evidence in support of their contention that the entire sign code was facially invalid because it was overbroad and vague and also constituted a prior restraint upon the exercise of First Amendment rights. The trial court refused to reach the merits of these allegations on the basis that the appellants lacked standing to litigate those issues.

Embedded in the traditional rules governing constitutional adjudication is the principle that a person to whom a statute may constitutionally be applied will not be permitted to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others in situations not before the court. However, a limited exception to this principle exists in First Amendment cases. Broadrick v. Oklahoma, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973); Bolles v. People, 189 Colo. ____, 541 P.2d 80 (1975).

A statute which is overbroad is objectionable, because it may discourage or "chill" persons from exercising their First Amendment rights. Such a statute is also invalid because it vests inordinate discretion in those charged with enforcement and administration of its provisions. Courts have, therefore, adopted a more liberal definition of standing in dealing with facial challenges to an overbroad statute on First Amendment grounds.

The United States Supreme Court reveiwed the types of cases in which claims of facial overbreadth have been entertained in Broadrick v. Oklahoma, supra. Four broad categories of cases were listed: (1) cases involving statutes which sought to regulate "only spoken words"; (2) cases in which the court thought that rights of association might be burdened; (3) cases in which the statute purported to regulate the time, place, and manner of expressive or communicative conduct; and (4) cases in which expressive conduct required official approval under laws that delegated standardless discretion to local officials resulting in virtually unreviewable restraints on First Amendment rights.

The appellants' allegations concerning the sign code bring this case within the scope of the above cases and require us to address the facial constitutionality of the ordinance without a showing of direct injury. The appellants, therefore, possess standing under the First Amendment exception and are not foreclosed by traditional standing requirements to challenge the sign code. However, because of the result reached in this opinion, reversal is not required as a result of the trial court's ruling on the standing issue.

II.

Overbreadth and Vagueness

We address the appellants' contentions on the merits, notwithstanding the trial court's dismissal on standing, because we consider the questions are of law and not of fact. Considerations of judicial efficiency and economy also warrant this action.

The challenges to Steamboat Springs' sign code must be examined in the light of general principles of zoning law. Zoning ordinances are presumed to be valid, and one assailing them bears the burden of overcoming that presumption by proof that the ordinance is invalid beyond a reasonable doubt. Ford Leasing Development Co. v. Board of County Commissioners, 186 Colo. 418, 528 P.2d 237 (1974); Bird v. City of Colorado Springs, 176 Colo. 32, 489 P.2d 324 (1971); City and County of Denver v. Chuck Ruwart Chevrolet, Inc., 32 Colo. App. 191, 508 P.2d 789 (1973). Where the reasonableness of a zoning ordinance is fairly debatable, it must be upheld. Nopro Co. v. Town of Cherry Hills Village, 180 Colo. 217, 504 P.2d 344 (1972). Zoning ordinances will not be disturbed unless the legislature has exceeded its power or has acted unreasonably. City of Greeley v. Ellis, 186 Colo. 352, 527 P.2d 538 (1974).

When reviewing a claim that a statute is overbroad, we must determine whether the ordinance prohibits speech that is beyond the scope of governmental regulation. Bolles v. People, supra. First Amendment concerns arise whenever signs are regulated or prohibited, because signs are by their very nature a means of expression and communication within the meaning of the First

Amendment. Commercial speech and more traditional types of speech are both entitled to First Amendment protection. Virginia State Board of Pharmacy v. Virginia Citizens' Consumer Council, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976); Bigelow v. Virginia, 421 U.S. 809, 95 S.Ct. 2222, 44 L.Ed.2d 600 (1975).

The appellants initially contend that the sign code defines "sign" so broadly as to include all types of visual communication, including posters and picket signs. Section 2(B)(50) of the sign code, as contained within the city's zoning ordinance, defines "sign" as "an object or device or part thereof situated outdoors or indoors. . . ." Webster's New International Dictionary (2d ed. 1959) defines "situated" as:

> "Having a site, situation or location; located, as a town situated on a hill. . . ."

We conclude that the sign code regulates only those signs which are affixed in some manner to real property so as to be "situated."

The appellants' overbreadth and vagueness contentions are primarily directed at a general restriction of the sign code contained in Section 19(A)(2):

> "Signs shall identify or advertise only interests conducted on the lot of the sign location, unless the Board of Adjustment, upon request, determines that an off-site sign, conforming to the district regulations in which the sign is located,

is necessary to promote the interests of the use to which it relates."

The sign code contains the following definitions:

> "Sign -- Off Premises. 'Off premises sign' means a sign which contains a message unrelated to a business or profession conducted, or a commodity, service or entertainment sold or offered upon the premises which such sign is located and pertaining to a permitted use."
>
> "Sign -- On Premises. 'On premises sign' means a sign directly pertaining to an existing permitted use on the property upon which said sign is located."

It is argued that the sign code is facially invalid, because it (a) effectively prohibits all off-premise signs, and (b) delegates standardless discretion to administrators, because exceptions are permitted by the sign code only if "necessary to promote the interests of the use to which it relates" -- a vague standard.

The regulation of conduct which touches First Amendment rights requires that we carefully balance the right of Steamboat Springs to exercise its police power against the ordinance's infringement on protected speech. In United States v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968), reh. den., 393 U.S. 900, 89 S.Ct. 63, 21 L. Ed.2d 188 (1968), the Supreme Court set forth several requirements for the regulation of conduct that threatens First Amendment rights. Such regulation is

permissible:

> "(I)f it is within the constitutional power of the government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest . . . ." United States v. O'Brien, supra.

The Steamboat Springs' sign ordinance satisfies these four requirements.

First, this regulation is clearly within the city's constitutional power to enact. Home-rule cities, such as Steamboat Springs, are constitutionally granted every power possessed by the General Assembly as to local and municipal matters, unless restricted by the terms of the city's charter. Colo. Const., Art. XX, Sec. 6; City of Greeley v. Ellis, supra; Service Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972); Davis v. City and County of Denver, 140 Colo. 30, 342 P.2d 674 (1959). Zoning is a matter of local concern. City of Greeley v. Ellis, supra. No restrictions on Steamboat Springs' police power that would prohibit the enactment of reasonable zoning regulations are contained in the city's charter.

Secondly, the requirement that the regulation furthers an important or substantial governmental interest requires, in the zoning context, that we determine whether the sign code's purpose, and the means adopted to further that purpose, are reasonably related to an important governmental

interest. John Donnelly & Sons, Inc. v. Outdoor Advertising Board, 339 N.E.2d 709 (Mass. 1975). Steamboat Springs' sign code is contained within the city's comprehensive zoning ordinance whose enumerated purposes include the intent to "secure safety from fire, panic, and other dangers; promote health and the general welfare . . . preserve natural amenities and desirable characteristics of the land while providing for progress."

The city's sign code regulates only those signs which are "visible from any public right-of-way." Section 2(B)(50). Implicit in this regulation is the city's legitimate concern for the safety of vehicular and pedestrian traffic. Distracting signs may serve to break the concentration of those using the roads with resultant loss of life and property. The sign code itself provides that no sign shall be located so as to impair the safety of a moving vehicle by obscuring the driver's vision. Section 19(A)(3).

In addition to the promotion of public safety, the city's sign code was also adopted to promote aesthetic values in the interests of the general welfare. Efforts by cities and towns to enact reasonable regulations designed to preserve and improve their physical environment have long been upheld by courts as being within the legitimate scope of a municipality's police power. Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98, 99 L.Ed. 27 (1954); John Donnelly & Sons, Inc. v. Outdoor Advertising Board, supra; State v. Diamond Motors, Inc., 50 Hawaii 33, 429 P.2d 825 (1967); Oregon City v. Hartke, 240 Or. 35, 400 P.2d 255 (1965). Zoning to preserve the city's natural amenities and desirable characteristics is even an

asserted purpose of the city's zoning ordinance of which the sign code is a part. A pleasant and orderly environment is especially important to a resort and vacation oriented community such as Steamboat Springs.

Notwithstanding our conclusion that the purpose of the sign code is directed at the furtherance of legitimate police power interests, the means adopted must be reasonably related to further those interests. In recent years, several courts have upheld district and city-wide prohibitions of off-premises signs as a legitimate exercise of the police power in the face of First Amendment arguments. Donnelly Advertising Corp. of Maryland v. City of Baltimore, 279 Md. 660, 370 A.2d 1127 (1977); Suffolk Outdoor Advertising Co., Inc. v. Hulse, 56 App.Div.2d 365, 393 N.Y.S.2d 416 (1977); John Donnelly & Sons, Inc. v. Outdoor Advertising Board, supra; Markham Advertising Co. v. State, 73 Wash. 2d 405, 439 P.2d 248 (1968), appeal dismissed for want of a substantial federal question, 393 U.S. 316, 89 S.Ct. 553, 21 L.Ed.2d 512 (1969), reh. den., 393 U.S. 1112, 89 S.Ct. 854, 21 L.Ed.2d 813 (1969).

In reviewing First Amendment cases dealing with sign regulation, the courts have focused upon the intrusive nature of signs and billboards and the fact that a "captive audience" is required to view such signs. In John Donnelly & Sons, Inc. v. Outdoor Advertising Board, supra, the court declared:

> "Further, we note that the present case in analogous to Kovacs v. Cooper, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949), where the court upheld a

prohibition of the use of sound trucks. The town by-laws, as was the case in Kovacs, do not regulate the content of ideas expressed, but rather protect individuals from highly distracting and intrusive communications. It is well established that a 'State or municipality may protect individual privacy by enacting reasonable time, place, and manner regulations applicable to all speech irrespective of content.' Erznoznik v. Jacksonville, supra 422 U.S. at 209, 95 S.Ct. at 2272 and cases cited. 'To enforce freedom of speech in disregard of the rights of others would be harsh and arbitrary in itself.' Kovacs v. Cooper, supra 336 U.S. at 88, 69 S.Ct. at 454."

Mr. Justice Brandeis quoted the following language in Packer Corp. v. Utah, 285 U.S. 105, 52 S.Ct. 273, 76 L.Ed. 643 (1932):

> "Billboards, street car signs, and placards and such are in a class by themselves * * * Advertisements of this sort are constantly before the eyes of observers of the streets * * * to be seen without the exercise of choice or volition on their part. Other forms of advertising are ordinarily seen as a matter of choice on the part of the observer * * * In the case of newspapers and magazines, there must be some seeking by the one who is to see and read the advertisement. The radio can be turned off, but not so the billboard . . . .'"

We conclude that the regulations adopted by Steamboat Springs to promote the public

safety and general welfare are reasonably related to further those legitimate interests.

Thirdly, the governmental interests furthered by the regulations are not related to the suppression of free expression and communication. The regulations are concerned only with the public's safety and general welfare and affect First Amendment rights only secondarily.

Finally, First Amendment rights are imposed only to the extent necessary to further the legitimate governmental interests of public safety and general welfare. On-premise signs, regardless of content, are permitted if they conform to the sign code's regulations, such as size and location. The city's classification of on-premise and off-premise signs is reasonable and accommodates the interests of the property owner and the municipality and imposes upon First Amendment rights to a permissible extent. Off-premise signs are not absolutely prohibited, but are permitted if "necessary to promote the interests of the use to which it relates."

We also conclude that the sign code is not void for vagueness. The prohibition of off-premise signs, unless "necessary to promote the interests of the use to which it relates," sets forth sufficient standards to withstand this constitutional challenge. "Necessary" implies that the erection of a sign is essential and indispensable to the use to which it relates. It requires that the administrator of the sign code engage in a good-faith determination to ascertain whether failure to permit a sign will effectively prohibit communication or expression of the message. Time considerations and the urgency of the message are

relevant in this determination.

III.

Prior Restraint

Appellants further contend that the sign code constitutes a prior restraint on the exercise of free speech by requiring the acquisition of a permit and the payment of a fee before any sign can be erected. U. S. Const., Amend. I; Colo. Const., Art. II, Sec. 10. This argument fails to recognize the need to strike a reasonable accommodation of the city's legitimate interests and the exercise of First Amendment rights.

The permit process is purely administrative in nature and is intended to insure that only signs which comply with the sign code's valid regulations will be erected. If the permit provision were stricken and the city were permitted to enforce its sign code only after a violation occurred, the city's legitimate interests would not be afforded their proper scope. Signs of any size and character could then be erected in locations which interfered substantially with the public's safety and general welfare. Enforcement of the sign code without the permit provision would depend on complaints or policing which would cause delay and create an additional expense. Furthermore, the interests of persons who intend to erect a sign are also furthered by the permit provisions of the sign code. Applicants can receive city approval prior to the expenditure of time and money in erecting a sign and thus avoid running the risk that their sign may violate the city's regulations.

IV.

Validity of Section 19(E)(2)

The appellants own signs which are regulated by the provisions of Section 19(E)(2):

> "E. Signs Extending Into Adjacent Property.
>
> "1. Any marquee or detached sign which extends into or over any property not owned by the sign user shall be discontinued at any time at the discretion of the adjacent property owner in the absence of contractual agreements to the contrary.
>
> "2. Such signs extending into or over public property more than three (3) feet shall be discontinued no later than September 1, 1975."

The free speech arguments made by the appellants in their challenge of Section 19(E)(2) rest upon well established principles concerning the public's right to exercise First Amendment rights on public property.

The appellants, however, overstate the scope of the regulation contained in Section 19(E)(2). The provision does not regulate or prohibit picketing or the exercise of traditional forms of free speech on public property. Section 19(E)(2) merely regulates the extent to which signs can extend into or over public property when affixed to real

property. The appellant's First Amendment contentions were, therefore, adequately answered in Part II.

Furthermore, we find that Section 19(E)(2) is a valid exercise of the city's police power. It is reasonably related to public safety and aesthetics (general welfare), both legitimate purposes of the exercise of a municipality's police power. Moreover, the means adopted by the city are reasonably related to further the city's legitimate interests. The conclusion that a sign which extends more than three feet into or over public property constitutes a more serious threat to public safety than does a sign which extends three feet is one properly within the reasonable exercise of the municipality's police power. Aesthetic considerations also justify this regulation.

Our conclusion is consistent with the majority rule which is that a city can exercise its police power to regulate or prohibit signs which extend over public property. Oscar P. Gustafson Co. v City of Minneapolis, 231 Minn. 271, 42 N.W.2d 809 (1950); 1426 Woodward Ave. Corp. v. Wolff, 312 Mich. 352, 20 N.W.2d 217 (1945); State v. Wightman, 78 Conn. 86, 61 A. 56 (1905).

V.

Equal Protection

The appellants also contend that Section 19(E)(2) violates their right to equal protection of the laws, U. S. Const., Amend. XIV., by providing for different and unequal treatment of nonconforming uses than do other code provisions. Signs which extend

more than three feet into or over public property must be abated by September 1, 1975, Section 19(E)(2). Signs which are nonconforming for failure to comply with other regulations, such as size, area, or height, are permitted to remain indefinitely, as long as there is no abandonment, damage, destruction, or obsolescence. Section 19(E)(14).

Every classification involves some degree of discrimination and unequal treatment. But the legislative classification will be upheld if it rests upon a real difference and if that difference bears a reasonable relationship to the purpose for which the classification is established.

The essential difference between Section 19(E)(2) and 19(E)(4) nonconforming signs is that the city has concluded that signs which extend over public property more than three feet endanger public safety and aesthetics (general welfare). Regulation of these signs, which requires abatement within twenty months of enactment of the sign code, is reasonably related to the safety and general welfare purposes for which the classification was established. The city can legitimately conclude that signs which extend more than three feet into or over public property present a greater cause for regulation than do signs which are nonconforming for other reasons.

Accordingly, the judgment is affirmed.

CLERK'S OFFICE

SUPREME COURT
State of Colorado
Denver 80203

March 13, 1978

Case No. 27587
Veterans of Foreign Wars
v.
City of Steamboat Springs

Messrs. Sharp and Black
Mr. Thomas R. Sharp,
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Mr. Allen T. Ratcliffe, Jr.,
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Steamboat Springs, Colorado. 80477.

Gentlemen:

The following proceedings were this day had in the above numbered and titled case:

The petition for rehearing was denied.

Yours very truly,

DAVID W. BREZINA, Clerk.

By: /s/ Florence Walsh
Deputy Clerk.

IN THE SUPREME COURT
OF
THE STATE OF COLORADO

VETERANS OF FOREIGN WARS, POST 4264, a non-profit association; YAMPA VALLEY COOPERATIVE ASSOCIATION, a Colorado corporation; F.M. LIGHT & SONS, INC., a Colorado corporation; ELOISE MORE, d/b/a DAIRY KING; DONALD BROOKSHIRE, d/b/a CORNER LIQUOR; EDWARD DETRICH, d/b/a WAFFLE SHACK, on behalf of themselves and as representatives of a class of persons similarly situated, Plaintiffs-Appellants, v. CITY OF STEAMBOAT SPRINGS, a municipality established under the laws of the State of Colorado, Defendant-Appellee,	No. 27587

NOTICE OF APPEAL
TO
THE SUPREME COURT OF THE
UNITED STATES

Notice is hereby given that the Appellants above-named, on their own behalf and as representatives of a class of persons similarly situated, appeal to

the Supreme Court of the United States from the final judgment rendered February 21, 1978, and entered February 21, 1978, affirming a Decree of the Routt County, Colorado District Court dated the 15th day of February, 1977.

This appeal is taken pursuant to 28 USC, §1257(2).

The parties taking the appeal are the named Plaintiffs, on behalf of themselves and as representatives of a class of persons similarly situated.

Respectfully submitted,

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Filed in the Supreme Court of the State of Colorado May 10, 1978 /s/ David W. Brezina, Clerk.

The following is a reprint of certain excerpts of the transcript of the trial of this matter to the District Court, Routt County, Colorado, held November 29 - December 1, 1976.

The first part is the transcript of a part of Plaintiffs' questioning of Mr. Don Morgan, the Steamboat Springs Building Inspector and the enforcer of the sign code.

The second part is the Plaintiffs' questioning of Mr. Peter Forbes, a real estate developer in Steamboat Springs.

I. PLAINTIFFS' INQUIRY OF MR.MORGAN:

A. (By Mr. Morgan) Okay, all right. We had something come up a while back. We had a sign that was a religious type of a sign. I forget what it was now. They put it up on the highway in the -- they put it -- well, it was on the State Highway Department right-of-way. It was a religious sign, one on each end of town. They kept their signs, but the signs had to go on private property, on the property to which it related. It went to an individual church, and the sign was moved from there over on this private property. See?

Q. (By Ms. Simmons) Mr. Morgan since you have opened up the topic, what classification and what category would an "I Found It" sign fall into? That is what the sign said, "I Found It."

A. That was a civic occasion, and they got that. They wanted -- they put it over there on the church property.

Q. But, Mr. Morgan, they wanted to have it on some other property.

A. They wanted it down on the road there.

Q. But, I thought you said that it was a civic occasion? Didn't you just say that "I Found It" sign would be a civic occasion?

A. I got to have time to study these things.

Q. Why do you think it takes awhile to study it?

A. In most cases, you know, people want a sign on their place of business. It is defined. But, you get into these types of things, you know, which are not -- it takes awhile to define these things. It is a civic occasion or what is it?

Q. Exactly, that is the whole point. The "I Found It" sign, now, what do the words "I Found It" mean to you? Does it have a religious connotation, the words, "I found it?"

A. I found out what it was. I found out that it was a religious sign.

Q. How did you find that out, Mr. Morgan?

A. Called the number that was on the sign.

Q. They gave you a religious message?

A. Yeah, I think they gave me a religious message.

Q. You determined it was a religious sign from that?

A. Yeah.

Q. On the face of it, does it indicate anything at all about religion?

A. Yeah.

Q. That "I found it?"

A. The sign says a lot of things. You have to call to find out what it is about anyway.

Q. Mr. Morgan, assuming the "I Found It" sign was a religious sign, was it proper to leave the sign where it was?

A. The sign is there because a few churches in town were putting on this program.

Q. Okay. You haven't answered my question.

A. Was your question why was it not proper to leave the sign where it was? I am getting to that. So anyway, they are advertising just like any place of business would be, and there was a place in this Sign Ordinance there that

says there couldn't be an off-premises sign. You can't have an off-premises sign and that is what they did.

Q. Was the "I Found It" sign an off-premises sign?

A. Yes. Their place of business was the various churches.

* * * *

MS. SIMMONS: Q. Mr. Morgan, did you take any action on the "I Found It" sign in the City?

A. Yes.

Q. Where was that sign located?

A. It was in the First National Bank.

Q. Why did you take action against that sign?

A. Well, I cooperate with the State Highway Department, and I got a call from them on one thing on it. This was because there was no State permit. That started it all. We were together there with that violation on that. So, I just called them up and told them, and they asked where they could put the sign. I told them that they could put it on any one of the church's property.

Q. Mr. Morgan, did you not make the determination that the "I Found It" sign was an off-premises sign? I think you did.

A. Yes.

Q. Even though this sign had a religious message, all it said was "I Found It?"

A. Yeah, but I called and found out what it was for.

Q. Mr. Morgan, one position is that religion has nothing to so with the banking business.

A. No, they don't have anything to do with one another, no.

Q. Religion and banking are totally different types of activities.

A. Yes.

Q. Who made that determination?

A. They are different.

Q. Yes.

A. Who determined that they are different?

Q. Were you familiar with the "I Found It" campaign?

A. Yes.

Q. Wasn't the point of the campaign that religion is supposed to get into all areas of our lives. We are not just supposed to leave religion on the doorstep of the church? You just testified that you were familiar with it.

A. Well, what you just said, that last sentence, I am not -- you know, I don't -- I was not familiar with it except in a general way, what it was about. But, that sentence you quoted, I don't know about that, no.

II. PLAINTIFFS' INQUIRY OF MR. FORBES:

BY MS. SIMMONS:

Please, state your name.

A. My name is Peter C. Forbes.

Q. What is your address?

A. 468 Seventh Street.

Q. What is your occupation?

A. I am a real estate developer.

Q. Are you familiar with the First Federal Savings and Loan Association in Steamboat Springs?

A. Yes, I am.

Q. Are you also familiar with the organization called "Here is Life, America?"

A. Yes, I am.

Q. Would you describe what the organization is?

A. "Here is Life, America" --

MR. RATCLIFFE (City Attorney): Your Honor, I would object. I don't see how -- I think this is getting beyond the foundation stage. I don't see how this is relevant to the rebuttal of Mr. Morgan's testimony.

MS. SIMMONS: Your Honor, this is merely by way of background. I am just trying to lay out the picture.

THE COURT: Go ahead, if it is just foundation.

MS. SIMMONS: Q. Would you please explain to the Court what the "Here is Life, America" is?

A. "Here is Life, America" is an evangelical organization that is oriented with the Campus Crusade for Christ organization in California. It is an interdenominational effort to spread the knowledge of Christ wherever the campaign is held. There is was a special "Here is Life, America" campaign effort made throughout the United States in this past year, 1976. And in Steamboat Springs a committee was formed by approximately 12 people.

MR. RATCLIFFE: Your Honor, I would object.

THE COURT: We are going beyond the question.

THE WITNESS: I was a member of the committee in Steamboat Springs.

Q. Did the "Here is Life, America" campaign have one phase of its campaign in Steamboat Springs?

A. Yes.

Q. When was that, Mr. Forbes?

A. That was the last week of April and the first week of May.

Q. What sort of activities took place in the last --

MR. RATCLIFFE: Your Honor, I would object. This is going far beyond the foundation stage.

THE COURT: We don't need to get into the sorts of activities.

MS. SIMMONS: Your Honor, without arguing, I really would like to state for the record that I think the sorts of activities are extremely relevant here. I will go ahead and ask specific questions.

Q. Mr. Forbes, did the "Here is Life, America" have a particular slogan?

A. Yes, it is called "I Found It."

Q. Did the "Here is Life, America" erect signs?

A. Yes.

Q. Where were those signs?

A. We had one outside the City and one on the First Federal Savings and Loan's property in the City.

Q. When were the signs erected?

A. I believe it was the Monday of the third week of April. Last year.

Q. After you erected the signs, were you contacted by the building inspector?

A. The building inspector contacted several members of our committee and the property owner and eventually me within, I'd say, 20 hours of the time the signs were placed on the property. And the word "erected" may be a little bit misleading.

MR. RATCLIFFE: Your Honor, this is getting beyond the question. Secondly, this is supposed to be rebuttal as to the exact same testimony that Mr. Morgan has given.

THE COURT: Well, the objection will be overruled.

MS. SIMMONS: A. Okay, Peter, you were saying that within 20 hours you were contacted by the building department?

A. I was personally in contact with the building department within 20 hours.

Q. And what were you told?

A. I was told to get the sign down immediately.

Q. Were you told that you should appeal to the Board of Adjustments?

MR. RATCLIFFE: Your Honor, I would object, I don't think this is an adverse witness.

THE COURT: It is a leading question, the objection is sustained.

MS. SIMMONS: Q. Were you told anything else besides just to take the signs down immediately?

A. Yes. Several suggestions were made as to how we might get a permit.

Q. What were those various suggestions?

A. Well, it was suggested that a size reduction be made in the sign and the sign be placed on church property.

Q. Now, did you want to put the sign on church property?

A. No.

Q. Why did you not want to put the sign on church property?

A. Because it would have removed the public exposure element that we had on the commercial property on which it was.

Q. How was your sign classified, Mr. Forbes, within the --

MR. RATLIFFE: Your Honor, I would object. This is in no way in rebuttal of Mr. Morgan's testimony.

MS. SIMMONS: Mr. Morgan has had difficulty in classifying the sign, and he was not certain as to how that sign should be immediately classified.

If he has had difficulty in classifying the sign, I think Mr. Forbes can testify to the fact that his sign was classified a certain way. This is rebuttal.

MR. RATCLIFFE: Again, we are receiving testimony as to the Ordinance. I was prohibited to get any testimony as to the administration of the Ordinance. We are talking specifically about the administration of the Ordinance.

MS. SIMMONS: Your Honor, you told me that I had to limit my questioning to actual facts and occurrences. That is precisely what I am trying to get at now, actual facts and occurrences.

THE COURT: Well, if the sign was classified, the witness can so state.

THE WITNESS: It was classified verbally as a religious sign having to do with religious matters.

THE COURT: By whom?

THE WITNESS: By the Building Department.

MS. SIMMONS: Q. Are you referring to Mr. Morgan?

A. I believe so. I have talked to both Mr. Morgan and Yvonne. I am not sure as to just which member of the department made this determination.

Q. Now, Mr. Forbes, you have looked at the Sign Ordinance, and there are the off-site signs and the multiple-use signs and the residential signs and

the "other" signs. As between the four of those --

MR. RATCLIFFE: I would object. I don't think his opinion is relevant.

THE COURT: She hasn't finished her question.

MS. SIMMONS: A. As between the four of those, was indication made to you as to which category your sign would come under?

A. I am sorry, I can't tell you exactly how.

Q. But, you were told to remove it?

A. Yes. This was in spite of the fact that some of the activity was taking place on the First Federal's property.

Q. Okay, now, Mr. Forbes, yesterday Mr. Morgan -- when we were going over this question with the off-site signs and the "I Found It" sign, Mr. Morgan testified that religion had nothing to do with the banking business and that is why the sign was classified the way it was and made to be removed from business property. Now, do you agree with that classification?

A. No.

Q. And why?

A. Well, I believe this religious program was directed toward every aspect of life and the appropriateness of religious emphasis -- that is emphasis identifying with Christ -- is appropriate in every phase of life, including business.

Q. Mr. Forbes, did you ever request a notice from the Building Department to remove the sign?

A. No, because by the time I was contacted, the signs had been taken down by other members of the community.

Q. Were there ever any discussions about, perhaps, taking this to the Board of Adjustments?

A. Before the campaign?

Q. After the twenty hours' notice?

A. The campaign was of such short duration, two weeks, it would have been of no point.

Q. Was your message of less effect because it was taken to the church property?

MR. RATCLIFFE: Your Honor, I object to this question. I don't think it is relevant.

THE WITNESS: In my opinion, the message suffered greatly.

MS. SIMMONS: Your Honor, I don't

have any other questions.

IN THE SUPREME COURT

OF THE

UNITED STATES

VETERANS OF FOREIGN WARS, POST 4264, a non-profit association; YAMPA VALLEY COOPERATIVE ASSOCIATION, a Colorado corporation; F. M. LIGHT & SONS, INC., a Colorado corporation; ELOISE MORE, d/b/a DAIRY KING; DONALD BROOKSHIRE, d/b/a CORNER LIQUOR; EDWARD DETRICH, d/b/a WAFFLE SHACK, on behalf of themselves and as representatives of a class of persons similarly situated,	No.77-1784
Plaintiffs-Appellants,	
vs.	
CITY OF STEAMBOAT SPRINGS, a municipality established under the laws of the State of Colorado,	
Defendant-Appellee.	

Appeal from the Supreme Court of Colorado
No. 27587

Appellee's Motion to Dismiss

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APPELLEE'S MOTION TO DISMISS

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MOTION TO DISMISS

Pursuant to Rule 16, Rules of the Supreme Court of the United States, the Appellee submits this Motion to Dismiss the appeal sought by the Appellants through their Jurisdictional Statement which has been previously filed with this court.

(A) Introduction

The Appellee submits this brief Motion to Dismiss to point out to the Court the reasons why the appeal sought by the Appellants herein should be dismissed. Appellee has no basic exceptions to sections(a),(b) or (c) of Appellants' Jurisdictional Statement. Appellee wishes to point out that Ordinance No.565, referred to on page 2 of the Appellants' Jurisdictional Statement and which amended the sign code provisions of Ordinance No.480, was not introduced into evidence at the trial of this case. Ordinance No. 565 is included in pages 17 through 21 of Appendix A to the Appellants' Jurisdictional Statement.

(B) Statement of the Case

The Appellants' Statement of the Case contained on pages 3 through 6 of their Jurisdictional Statement is essentially accurate. Appellee does wish to make several additions and clarifications to Appellants' Statement of the Case.

Appendix A of Appellants' Jurisdictional Statement is offered as a portion of the general zoning ordinance for the City of Steamboat Springs, Ordinance No.480. The portion of the ordinance included in the Appellants' Appendix A does include the regulations for signs which were considered by the Colorado Supreme Court. However, Appellants' Appendix A fails to include portions of the Ordinance which set forth numerous definitions applicable to the sign regulations. Appellants have only included the definition of the word "sign" as it is presented in the ordinance.

To assist the Court with its interpretation of the sign code under consideration, Appellee has included an Appendix to this Motion to Dismiss which includes the definitions contained in the general zoning ordinance which are applicable to the sign regulation contained in Ordinance No.480, other than the definition for the word "sign". These definitions are part of the record which was presented to the Colorado Supreme Court.

Furthermore, on page 4 of their Jurisdictional Statement, Appellants describe Section 19(E)(2) of Ordinance No.480 as a "blanket prohibition" against the display of all signs at any location which is more than three feet over or into public property. This section, which can be found at page 14 of Appendix A of Appellants' Jurisdictional Statement, only prohibits those signs described as "marquee" or "detached" signs from extending into or over public property more

than three feet. The limited application of this section was recognized by the Colorado Supreme Court in its decision below (see pages 15 and 16 of Appendix C to the Appellants' Jurisdictional Statement).

Appellants' description of the testimony at trial, contained at page 5 of their Jurisdictional Statement is, of course, incomplete. Appellee will only state that, taken as a whole, the transcript of the trial below which was considered by the Colorado Supreme Court supports the conclusions of the trial court and the unanimous decision to affirm by the Colorado Supreme Court.

(C) Argument in Support of Motion to Dismiss

Appellants' principle reason for this Motion to Dismiss is its earnest belief that the decision rendered by the Colorado Supreme Court properly and adequately addresses the issues which Appellants now ask this Court to review. Furthermore, Appellee believes that the concerns raised by Appellants have been adequately addressed in prior decisions of this Court.

It would be fruitless to assert that this case does not present federal questions. Clearly, all issues herein involve First Amendment consideration. The Colorado Supreme Court, which expressly passed on these issues, devotes most of its decision to a discussion

of First Amendment concerns and relies heavily on federal authority to support its view.

However, a federal question must also be substantial to justify the acceptance of an appeal by this Court. While recognizing the serious import of the issues herein, Appellee submits that the involvement of First Amendment concern does not automatically qualify an issue as a substantial federal question. This is especially so when the impact of the ordinance in question is clearly understood in light of its content and in light of previous case law which implicitly supports this type of regulation. Much of this case law is cited in the opinion of the Colorado Supreme Court.

At the outset, Appellants' Jurisdictional Statement strains to enlarge the actual impact of the ordinance. The Colorado Supreme Court correctly recognized this. The definition of the word "sign" of which the Appellants complain has already been before a federal court on at least one prior occasion. Art Neon v. City and County of Denver, 488 F.2d 118 (10th Cir.1973).

The effect of the six exclusions from the definition of the word "sign" and the sixteen exemptions to the permit requirement, including signs required or authorized "by any law", is to extremely minimize the effect of the sign code on protected forms of speech. As the Colorado Supreme Court

noted in its decision, the sign code affects First Amendment rights "only secondarily." (See Jurisdictional Statement, Appendix C - page 13.)

Furthermore, the hypotheticals posed by Appellants on pages 8 and 9 of the Jurisdictional Statement are not supported by the factual record or City administrative practice. Intent on finding fault at any cost, Appellants have urged the Court to dwell upon the "germs of uncertainty" which this Court has recognized must undoubtedly exist in any regulation which attempts to be both specific and manageably brief. Broadrick v. Oklahoma, 413 U.S. 601 (1973).

The prior restraints and lack of procedural safeguards of which Appellants complain simply do not exist. The ordinance upheld is replete with sufficiently clear and specific standards and procedures designed to protect the speech of those wishing to erect any signs which do come within the permit requirement. Furthermore, the "pernicious" power which Appellants argue is vested in the Board of Adjustment with respect to its variance authority is misstated. The Board of Adjustment is given discretionary guidance with very specific standards to follow in both Sections 19(A)(2) and 19(D) of Ordinance No. 480.

The Appellants' complaints addressed at Section 19(E)(2) of the ordinance have been directly addressed by the Colorado Supreme Court, and as

its opinion notes, many other courts throughout this country. Appellants' reliance upon Amalgamated Food Employees v. Logan Valley Plaza, 391 U.S. 308 (1968) at page 16 of the Jurisdictional Statement is also misplaced. The ordinance in question is not a broad or absolute regulation of First Amendment rights and, as this Court recognized in the same decision, municipalities possess the power to control the use of public property. This power has been recognized in many opinions of this Court. 391 U.S. at 320-321.

In conclusion, a sign limitation ordinance passes constitutional muster if the governmental interest is unrelated to suppression of expression, and is substantial in relation to the restrictions imposed, and if the restrictions are no greater than necessary for the protection of the governmental interest. Free speech is not an absolute license at all times under all circumstances. Here, the sign code under question passes constitutional muster. The governmental interests involved are clearly recognizable and have been discussed and upheld both by the Colorado Supreme Court and by this Court in many prior decisions.

Therefore, this appeal should be dismissed for want of a substantial federal question.

Respectfully submitted,

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APPENDIX

Further definitions contained in Ordinance No.480 of the City of Steamboat Springs relating particularly to the regulation of signs (all definitions are subsections of Section 2(B) of Ordinance No.480).

34. Marquee. A sign attached to and supported by the building and projecting over public property.

51. Sign Area. The area of the smallest plane geometric figure which encompasses the facing of a sign, including copy, insignia, background and border. For wall signs consisting of the individual letters attached or painted to the building surface, the sign area shall be derived by adding the smallest plane geometric figures of each of the individual words. In the event that a sign has more than one face, the areas of each face shall be added to determine the total sign area.

52. Sign Code. Uniform Sign Code, 1973 edition, or any substitute sign code adopted by the City Council.

53. Sign, Detached. Any sign structurally separate from the building housing and the use to which the sign is appurtenant, such sign being supported on itself, or on a standard or legs.

54. Sign Height. The height above grade measured from the average grade at the base of the sign to the highest point of the sign trim or detached support structure.

55. Sign, Projecting. Any sign supported by a building wall and projecting therefrom on a horizontal plane more than twelve (12) inches.

56. Sign, Wall. Any sign painted on, incorporated in, or fixed to the building wall, and any sign consisting of cut out letters or devices affixed to the building wall with no background design on the building wall, provided such sign does not project from the building wall in a horizontal plane more than twelve (12) inches.